

The
Zemindary Settlement
of Bengal.

IN TWO VOLUMES.

VOLUME II.

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INTRODUCTION.

THE first four papers in this volume relate to the enhancement of rent in Bengal. Perhaps they establish the position that Lord Cornwallis intended, and the Regulations of 1793 prescribed—the same permanent settlement for the ryot as for the zemindar. The fifth paper, however, shows the failure of the settlement in this respect. The rent question in Bengal, in the present day, is seemingly insoluble; but if we hold firmly to the fact that by the permanent settlement of 1793 the ryot was to pay no higher rent than the pergunnah rate, *plus* abwabs, of that year, a solution ought to be found by intelligently studying examples in Europe, of which there is no lack.

With this purpose, eight papers relating to land tenures in the West have been introduced into this volume. They show that the curse of middlemen, which impoverishes Bengal, does not exist in Continental Europe, and that it has also practically ceased in Ireland; also that, wherever, on the Continent, the cultivators of land are prosperous, they are proprietors of small farms, or are subject only to a fixed rent. It will be difficult, after reading of what has been done in Europe, to say why the ryots in Bengal should not, in the present day, have the same security against surrender to others of increased earnings from the lands they cultivate, as is enjoyed by the cultivating class on the Continent of Europe, and as was designed for them in the permanent settlement.

The papers relating to land tenures in the West may be divided into those which afford an encouraging example, and others which convey a warning, to the Indian Government.

The examples occur on the Continent of Europe ; the warnings, in England and Ireland. Cottierism is the Irish difficulty; and the aim of many zemindars and almost all middlemen in Bengal is to reduce the ryots to cottierism. Lord Cornwallis hoped much from great zemindars ; but we find that in England, in the present day, the system of great zemindars has brought about a social condition which is fraught with political danger.

On the other hand, when we turn to the Continent, we find that Russia, Germany, Austria, have liberated the cultivators of the soil during the present century, and that France—the country, especially, of peasant-proprietors—has suffered least, among European countries, from the general depression of trade, while she suffers least, among all countries, from commercial crises.

A survey of the condition of the agricultural classes in Europe shows that the most conservative force that has worked during the present century is the French revolution, which spread peasant proprietorship over Continental States ; while a condition of society, charged with the elements of revolution, and of a war of class against class, is being brought about in England by the system of large estates.

The application of European examples to the relations between zemindar and ryot in Bengal is not hard to seek, with the full information presented in this volume.

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APPENDIX XVII.

PRINCIPLES OF REAL PROPERTY RIGHTS AND OF • PRESCRIPTION.

1. In encountering the intricacies of the subject of occupancy right, we should grasp the principles of rights in real property, and of prescription. Our first extracts will be from Mr. John Austin's Lectures on Jurisprudence.

APP.
XVII.
—

I.—COMMON NATURE OF RIGHTS.

(a). Every right is a right *in rem* or a right *in personam*.

(b). The essentials of a right *in rem* are these:—it resides in a determinate person or in determinate persons, and avails against other persons *universally* or *generally*. Further, the duty (on the part of other persons) with which it correlates, or to which it corresponds, is *negative*, that is to say, a duty to forbear or abstain. Consequently, all rights *in rem* reside in determinate persons, and are rights to *forbearances* on the part of the persons generally. Vol. II,
pages 57-9.

(c). The essentials of a right *in personam* are these:—it resides in a determinate person or in determinate persons, and avails against a person or persons certain or determinate. Further, the obligation (on the part of some other determinate person or persons) with which it correlates, or to which it corresponds, is *negative* or *positive*; that is to say, an obligation to forbear or abstain, or an obligation to do or perform. Consequently, all rights *in personam* reside in determinate persons, and are rights to *forbearances* or *acts* on the part of determinate persons.

(d). It follows from this analysis, first, that all rights reside in *determinate* persons; secondly, that all rights correspond to duties or obligations incumbent upon *other* persons, that is to say, upon persons distinct from those in whom the rights reside; thirdly, that all rights are rights to *forbearances* or *acts* on the part of the persons who are bound.

II.—JUS IN REM, JUS IN PERSONAM, CONTRASTED.

(a). The terms "*jus in rem*" and "*jus in personam*" were devised by civilians of the middle ages, or arose in times still more recent. * * The phrase "*in rem*" denotes the *compass*, and not the *subject*, of the right. It denotes that the right in question avails against persons generally, and *not* that the right in question is a right over a *thing*. * * The phrase "*in personam*" is an elliptical or abridged expression for "*in personam certam sive determinatam*." Like the phrase *in rem*, it denotes the *compass* of the right. It denotes that the right avails exclusively against a *determi-*

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OF RIGHTS.

Para. 1, contd.

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& xxv.Duties corre-
sponding to
rights, and in-
cumbent on
other than the
person or per-
sons on whom
the right
resides.Duties con-
tinued.

nate person (*i.e.*, a person determined specifically), or against *determinate* persons.

(b). Though every right resides in a person or persons determinate, a right may avail against a person or persons determinate, as *in personam*, or against the world at large (as *in rem*). Duties answering to rights which avail against the world at large (*i.e.*, rights *in rem*) are negative; that is to say, duties to *forbear*. Of duties answering to rights which avail against persons determinate (*i.e.*, rights *in personam*), some are negative, but others and most are *positive*, that is to say, duties to *do* or *perform*.

(c). The relative duties answering to rights *in rem* might be distinguished conveniently from duties of the opposite class, by the appropriate name of *offices*; the relative duties answering to rights *in personam* by the appropriate name of *obligations*.

Note.—In the writings of the Roman lawyers, the term *obligatio* is never applied to a duty which answers to a right *in rem*. But since they have no name appropriate to a right *in personam*, they use the term *obligatio* to denote a right of the class, as well as to denote the duty which the right implies. *Jus in rem* or *jura in rem*, they style *dominium* or *dominia* (with the larger meaning of the term); and to *dominia* (with that more extensive meaning) they oppose *jura in personam*, by the name of *obligationes*.

(d). To exemplify the leading distinctions which I have stated in general expressions, I advert to the right of property or ownership, and to rights arising from contracts. The proprietor or owner of a given subject has a right *in rem*, since the relative duty answering to his right is a duty incumbent upon persons *generally and indeterminately* to forbear from all such acts as would hinder his dealing with the subject agreeably to the lawful purposes for which his right exists. But if I singly, or I and you jointly, be obliged, by bond or covenant, to pay a sum of money, or not to exercise a calling within conventional limits, the right of the obligee or covenantee is a right *in personam*; the relative duty answering to his right being an obligation to do or to forbear, which lies exclusively on a person or persons *determinate*.

III.—RIGHTS AND DUTIES.

Ibid., page 59.

(a). The *objects* of duties are acts and forbearances, or (changing the expression) every party upon whom a duty is incumbent is bound to do or to forbear. Or (changing the expression again) the party violates the duty which is incumbent upon him by *not* doing some act which he is commanded to do, or by doing some act from which he is commanded to abstain. * * The acts or forbearances to which the obliged are bound, I style the *objects* of duties.

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(b). The objects of *relative duties*, or of duties which answer to rights, may also be styled the *objects* of the *rights* in which those duties are implied. In other words, all rights reside in persons, and are rights to acts or forbearances on the part of *other* persons.

Ibid., page 59.

(c). Duty is the basis of right; that is to say, parties who have rights, or parties who are invested with rights, have rights to acts or forbearances enjoined by the sovereign upon other parties. Or (in other words) parties invested with rights are invested with rights, because other parties are bound by the command of the sovereign to do or perform acts, or to forbear or abstain from acts.

(d). In short, the term "right" and the term "*relative duty*" signify the same notion, considered from different aspects. Every right supposes distinct parties. A party commanded by the sovereign to do or to forbear, and a party *towards* whom he is commanded to do or to forbear, * * the person or persons to whom the command is directed, are said to be *obliged*, or to lie under a *duty*. The party *towards* whom the duty is to be observed, is said to have a *right*, or to be invested with a right.

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—
RIGHTS *in personam* AND
RIGHTS *in rem*.
Para. 2.
—
Ibid., pages
59-61.

IV. Besides the foregoing—

(a). Acts, forbearances, and omissions which are violatory of rights or duties, are styled *delicts*, *injuries*, or *offences*. Vol. I, page xxxi.

(b). Rights and duties which are consequences of delicts are *sanctioning* (or preventive) and remedial (or reparative). In other words, the ends or purposes for which they are conferred and imposed are two:—*first*, to prevent violations of rights and duties which are *not* consequences of delicts; *secondly*, to cure the evils, or repair the mischiefs which such violations engender.

(c). Rights and duties *not* arising from delicts may be distinguished from rights and duties which are consequences of delicts, by the name of *primary* (or principal). Rights and duties arising from delicts may be distinguished from rights and duties which are *not* consequences of delicts, by the name of *sanctioning* (or secondary).

(d). *Sanctioning* rights (all of which are rights *in personam*), *sanctioning* duties (some of which are relative, but others of which are absolute),¹ together with *delicts* or *injuries* (which are causes or antecedents of sanctioning rights and duties), are the subjects of the second of the capital departments under which I arrange or distribute the matter of the law of things. Page xxvi.

2. Coming to a nearer view of rights *in personam* and rights *in rem*, we find—

I.—IN PERSONAM.

(a). Rights *in personam* as existing *per se* (or as not combined with rights *in rem*), including the obligations which answer to rights *in personam*, arise from facts or events of three distinct natures—*viz.*, from *contracts*, from *quasi-contracts*, and from *delicts*. *Ibid.*, page xxxiii.

(b). The only rights *in personam* which belong to this sub-department are such as arise from contracts and quasi-contracts. Such as arise from delicts belong to the second of the capital departments (para. 1, IV, d) under which I arrange or distribute the matter of the law of things.

II.—IN REM.

(a). The expression *in rem*, when annexed to the term right, does not denote that the right in question is a *right over a thing*. Instead of indicating the nature of the subject, it points at the compass of the correlating duty. It denotes that the relative duty lies upon persons generally, and is not exclusively incumbent upon a person or persons *Ibid.*, page xxxiii.

¹ *i.e.*, there is no determinate party whom a breach of the duty would injure, or towards or in respect of whom the duty is to be observed.

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XVII.RIGHTS *in personam* AND
RIGHTS *in rem*.

Para. 2, contd.

determinate. In other words, it denotes that the right in question *avails against the world at large*.

(b). Accordingly, some rights *in rem* are rights over *things*; others are rights over *persons*; whilst others have *no* subjects (persons or things) over or to which we can say they exist, or in which we can say they inhere. For example, property in a house, property in a quantity of corn, or property in or a right of way through a field, is a right *in rem* over or to a *thing*, a right *in rem* inhering in a *thing*, or a right *in rem* whereof the subject is a *thing*. The right of the master against third parties to his slave, servant, or apprentice, is a right *in rem* over or to a *person*. It is a right residing in one person, and inhering in another person as its subject. The right styled a monopoly is a right *in rem* which has *no* subject. There is *no* specific subject (person or thing) over or to which the right exists, or in which the right inheres. The *officium* or common duty to which the right corresponds is a duty lying on the world at large to forbear from selling commodities of a given description or class; but it is not a duty lying on the world at large to forbear from acts regarding determinately a specifically determined subject.

(c). I shall therefore distinguish rights *in rem* (their answering relative duties being implied) with reference to differences between their *subjects*, or between the aspects of the forbearances which may be styled their *objects*. As distinguished with reference to those differences, they will fall (as I have intimated already) into three classes:—

(1). Rights *in rem* of which the subjects are things, or of which the objects are such forbearances as regard determinately specifically determined things.

(2). Rights *in rem* of which the subjects are persons, or of which the objects are such forbearances as regard determinately specifically determined persons.

(3). Rights *in rem* without specific subjects, or of which the objects are such forbearances as have *no* specific regard to specific things or persons.

3. The essential difference, which these extracts indicate, between rights *in personam* and rights *in rem*, is that the former inhere chiefly in contracts, the latter are altogether¹ outside contracts. The rights of property in land possessed by village communities, or which remained with the members of disintegrated village communities, were outside contracts, that is, they were rights *in rem*; the zemindar's right, on the other hand, is a servitude derived from a contract. Having noted this material difference, further extracts will be confined to an exposition of rights *in rem*:—

I. By different rights *in rem* over things or persons (para. 2 section II c), the different persons in whom they respectively reside are empowered to derive from their respective subjects different quantities of uses or services. Or (changing the expression) the different persons

Vol. I, page xxx.

¹ Leases are classed by Mr. Austin among rights *in rem*; but they are such in respect only of forbearances due by the world at large to the ownership of the land, which is the subject of the lease; in other respects they are the same as any other contract with determinate persons.

in whom they respectively reside are empowered to use or deal with their respective subjects in different degrees or to different extents. Or (changing the expression again) the different persons in whom they respectively reside are empowered to turn or apply their respective subjects to ends or purposes more or less numerous. And such differences obtain between such rights, independently of differences between their respective durations, or the respective quantities of time during which they are calculated to last.

APP.
XVII.

RIGHTS IN REM.
Para. 3, contd.

II. Of such differences between such rights, the principal or leading one is this:—

Vol. I, page
xxx.

(a). (1). By virtue of some of such rights, the entitled persons, or the persons in whom they reside, may use or deal with the subjects of the rights to an extent which is incapable of exact circumscription, although it is not unlimited.

Ibid., page xxx.

(2). Or (changing the expression) the entitled persons may apply the subjects to purposes the number and classes of which cannot be defined precisely, although such purposes are not unrestricted.

(3). For example: The proprietor or owner is empowered to turn or apply the subject of his property or ownership to uses or purposes which are not absolutely unlimited, but which are incapable of exact circumscription with regard to class or number. The right of the owner, in respect of the purposes to which he may turn the subject, is only limited, generally and vaguely, by the rights of all other persons, and by all the duties (absolute¹ as well as relative) incumbent on himself. He may not use his own so that he injure another, or so that he violate a duty (relative or absolute) to which he himself is subject. But he may turn or apply his own to every use or purpose which is not inconsistent with that general and vague restriction.

(b). (1). By virtue of other of such² rights, the entitled persons, or the persons in whom they reside, may merely use or deal with their subjects to an extent exactly circumscribed (at least in one direction). Or (changing the expression) they may merely turn them to purposes defined in respect of number, or at least in respect of class.

(2). For example: He who has a right of way through land owned by another may merely turn the land to purposes of a certain class, or to purposes of determined classes. He may cross it in the fashions settled by the grant or prescription; but those are the only purposes to which he may turn it lawfully.

III. (a). A right belonging to the first-mentioned kind (II a) may be styled *dominion*, *property*, or *ownership*, with the sense wherein *dominion* is opposed to *servitus* or *easement*. As contradistinguished to a right of the first-mentioned kind (IIa), a right belonging to the last-mentioned kind (IIb) may be noted by one or other of the last-mentioned names, *viz.*, *servitus* or *easement*.

(b). *Dominion*, *property*, or *ownership*, is a name liable to objection for—

1st.—It may import that the right in question is a right of unmeasured duration, as well as indicate the indefinite extent of the purposes to which the entitled person may turn the subject.

See note to para. 1, section IVd.

² See commencing line of this section (II).

APP.
XVII.Rights in rem.
Para. 3, contd.

2ndly.—It often signifies *property*, with the meaning wherein *property* is distinguished from the *right of possession*, to which I shall advert below.

3rdly.—*Dominion*, with one of its meanings, is exactly co-extensive with *jus in rem*, and applies to every right which is not *jus in personam*. For various reasons, which I shall produce in my lectures, a right belonging to the last-mentioned kind is not denoted adequately by the *servitus* of the Roman or by the “easement” of the English law.

(c). But in spite of the numerous ambiguities which encumber these several terms, I think them less incommodious than the newly devised names, by which it were possible to distinguish the rights of the two kinds (IIa and IIb).

Rights in rem
or Dominion and
servitus.Vols. I—XXXII
and XXXIII.

4. Mr. Austin laid out his subject of rights *in rem* in great detail; a portion of the detail is extracted as follows:—

I. I shall consider in a general manner such distinctions between rights *in rem* as are founded on differences between the degrees wherein the entitled persons may use or deal with the subjects: particularly that leading distinction of the kind which may be marked with the opposed expressions *dominium et servitus*, or *ownership and easement*; understanding the expression *dominion* or *ownership* as indicating merely the indefinite extent of the purposes to which the entitled person may turn the subject of the right.

II. I shall consider the various *modes* of dominion or ownership, and the various *classes* of servitudes or easements.

III. Although they are incapable of exact circumscription, the purposes to which the owner may turn the subject of his ownership are not exempt from restrictions. The oblique manner wherein the restrictions are set, I shall attempt to explain.

IV. Rights *in rem* are rights of unlimited or rights of limited duration. Every right of unlimited duration is also a right of unmeasured duration, that is to say, a right of which the duration is not exactly defined. But of rights of limited duration some are rights of unmeasured duration, whilst others are rights of duration exactly defined or measured. For example: An estate in fee simple, or property in a personal chattel, is a right of unlimited, and therefore of unmeasured duration. An estate for life is a right of unmeasured but limited duration. The interest created by a lease for a given number of years is a right of a duration limited and measured. Accordingly, I shall distinguish rights of unlimited from rights of limited duration; and I shall distinguish rights of limited into rights of unmeasured and rights of measured duration.

Other defini-
tions.

5. Certain other definitions by Mr. Austin may be noted:—

I.—ABSOLUTE PROPERTY.

Vol. III, page 48.

(a). A right of unlimited duration (as I understand the expression) is not of necessity alienable by the party actually bearing it from the possible series of successors *ab intestato*. For example: According to the older English law, the tenant in fee simple could not alien (even with

the consent of his feudal superior) without the consent of the party who was then his apparent or presumptive heir. And until tenants-in-tail were able to alien from the heirs-in-tail by fine or recovery, the estate tail was not alienable from any of the series of possible successors on whom by the creator of the estate it was destined to devolve.

(b). Absolute property is always accompanied with a power of aliening from the future successors *ab intestato*. But property of unlimited duration (as an estate in fee simple or an estate-in-tail) is not of necessity absolute.

(c). The idea of absolute property, or of property pre-eminently so called, is a right indefinite in power of user, unlimited in power of duration, and alienable by the actual owner from every successor who in default of alienation by him might take the subject.

APP.
XVII.

OTHER DEFINITIONS.

Para. 5, contd.

Ibid., page 80.

II.—ESTATE FOR LIFE.

Where a right of unlimited duration is not alienable from the future successors *ab intestato*, the right of the party actually entitled is in effect an estate for life.

III.—PROPERTY (as opposed to SERVITUS or EASEMENT).

(a). By this term I mean any right which gives to the entitled party an indefinite power or liberty of using or disposing of the subject: or (in other words) which gives to the entitled party such a power or liberty of using or disposing of the subject as is not capable of exact circumscription; as is merely limited generally by the rights of all other persons, and by the duties (relative or absolute) incumbent on himself.

(b). An estate in fee simple in land, absolute property in a personal chattel, or an estate or interest for life or years in land or a personal chattel, are all of them cases of *property* or *dominion* (taking the expression in the sense which I am now giving to it). * * The party may apply the subject to any purpose or use which does not amount to a violation of any right in another, or to a breach of any duty lying on himself. And it is only in that negative manner that the purposes to which he may apply it can be determined.

IV.—SERVITUS or EASEMENT (as opposed to PROPERTY or DOMINION).

By this I mean any right which gives to the entitled party such a power of liberty of using or disposing of the subject as is defined or circumscribed exactly.

(a). A right of way through land belonging to another, a right of common (or of feeding one's cattle on land belonging to another), or a right to tithe (or to a definite share in the produce of land belonging to another), are all of them cases of *servitus* or *easement* (as I now understand the expression). * * The party may apply the subject to purposes, or may derive from it user, which are not only limited generally by the duties incumbent upon him, but which are determined (or capable of determination) by a positive and complete description.

Ibid., page 3.

Zemindar.

APP.
XVII.OTHER DEFINI-
TIONS.

PARA. 5, CONTD.

Ibid., page 3.

V.—PROPERTY and SERVITUS.

In a word, *servitus* or easement gives to the entitled party a power or liberty of applying the subject to *exactly determined purposes*. Property or *dominion* gives to the entitled party the power or liberty of applying it to *all* purposes, *save* such purposes as are not consistent with his relative or absolute duties.

VI.—POWER OF USER.

Ibid., page 6.

(a). Even the right of property pre-eminently so called (or the right of property whose duration is unlimited) is not unlimited in respect of the power of user which resides in the proprietor. The right of user (with the corresponding right of excluding others from user) is restricted to such a user as shall be consistent with the rights of others generally, and with the duties incumbent on the owner.

(b). For example: if I am the absolute owner of my house, I may destroy it if I will. But I must not destroy it in such a manner as would amount to an injury to any of my neighbours. If, for example, I live in a town, I may not destroy my house by fire, or blow it up by gunpowder.

(c). And the power of user which is implied by the right of property, may also be limited by duties which are incumbent on the owner specially or accidentally.

(1). For example: the power of user may be restricted by duties or incapacities which attach upon the owner in consequence of his occupying some status or condition. We may conceive, for example, that an infant proprietor is restricted (by reason of his infancy) in respect of the power of using as well as the power of aliening.

(2). Or the power of user may be restricted by reason of a concurrent right of property residing in another over the same subject (*condominium, metcigenthum*, joint-property, or property in common).

(3). Or the power of user may be restricted by a right of servitude residing concurrently over the same subject in another person. For example: I have (speaking generally) a right of excluding others from my own field; but I have not a right of excluding you (exercising your servitude or easement), if you have a right of way (by grant or prescription) over the subject of my right of property.¹ I have (speaking generally) a right to the produce of the field; but that right is limited by a right in the person² to a tithe, unless my land be tithe-free.³

Ibid., page 7.

(d). It follows from what has preceded that neither that right of property which imports the largest power of user, nor any of the rights of property which are modes or modification of that, can be defined exactly. For property or dominion, *ex vi termini*, is *jus in rem*, importing an indefinite power of user, *i. e.*, such a power of using or dealing with the subject as is limited by nothing but the duties incumbent on the owner; or a power of applying the subject to any purpose whatever which does not conflict with any duty to which the owner is subject.

Ryot.

² Zemindar.³ Rent-free.

(e). This indefiniteness is of the very essence of the right, and implies that the right (in so far as concerns the power of user) cannot be determined by exact and positive circumscription. Such an application of the subject as consists with every of his duties, the owner has a right to make. And any act by another, preventing or hindering any application of the kind, is an offence against his right. The definition, therefore, of the right lies throughout the *corpus juris*, and imports a definition of every right or duty which the *corpus juris* contains.

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XVII.
—
SERVITUS.
PART. 6.

6. Before developing the several classes of *servitus*, it may be convenient to exhibit *servitus* in its place among *rights in re aliénâ* :—

I. Every *jus in re aliénâ* is a fraction or particle (residing in one party) of dominion, strictly so-called, residing in another determinate party. Vol. III, page 63.

II. But *jura in aliénâ* have no other common property than that which I have now stated. Different rights of the class are composed of different fractions of that right of absolute property from which they are respectively detached. Some are mainly definite subtractions from the right of user and exclusion residing in the owner; others are indefinite subtractions from his power of user and exclusion for a limited time; and so on.

III. The *jura in aliénâ* which commonly are marked by modern expositors of the Roman law are *servitus*, *emphyteusis*, *superficies*, and the *jus in rem* which is taken by a creditor under a pledge or mortgage. And to show the nature of the distinction between the *jus in re propriâ* and *jus in re aliénâ*, I will briefly advert to each of the four in the order in which I have stated them :—

(a).—*Servitus*.

(1). Servitudes, properly so called (whether affirmative or negative, real or personal), were esteemed *jura in re aliénâ*, because they gave a right of definite user over a subject owned by another, or of subtracting a definite fraction from the owner's right of user or exclusion. Vol. III, page 64.

(2). Servitudes, improperly so called (*usufructus*, *usus*, and *habitatio*), were property for life, limited to life of owner, though the limitation for life was not essential. When property for life, they were *jus in re aliénâ*, because they were subtracted from the dominion of the author or grantor, and on their expiration reverted to the grantor or his representatives.

(b).—*Emphyteusis*.

Though of unlimited duration, accompanied with power in the emphyteutor of unlimited user, and though alienable from his own heirs, *emphyteusis* was nevertheless *jus in re aliénâ*, because it was a right or estate carved out of another estate, or having a reversion expectant upon it. It reverted to the author or grantor or his representatives. It was absolute property, because there was no power of aliening from all future succession. Vol. III, page 64

[It was analogous to a fee-simple, where the land is held of a mesne lord; or analogous to an estate in fee of copyhold tenure.]

APP.
XVII.SERVITUS.
Para. 6, contd.

Where an estate in fee-simple of free-hold tenure is subject to a quit rent, there would seem to be a *servitus* in the lord, as lord of the fee. So in case of copyhold. So in case of *emphyteusis*. Or perhaps an obligation *quasi ex contractu*. Or a *servitus* and an obligation combined.

(c).—*Superficies*.

Vol. III, page 66.

Superficies is clearly not a *servitus*. And inasmuch as it exists concurrently with another right of property over the same subject, it would seem to fall under the section of *condominium* (i.e., joint property, or property in common), rather than property which is *jus in re aliend*, i.e., which is carved out of property in another, and is to revert to the grantor. * * An improper servitude, like superficies, gives a right of indefinite user, and may be a right of unlimited duration.

7. In the course of the following extracts, which develop the classes of *servitus*, it will be observed that the zemindar's right in Bengal is *servitus*, and not *dominium* :—

Servitus—

Vol. II, page 36.

I. *Servitus* (for which the English "easement" is hardly an adequate expression) is a right to *use or deal with*, in a *given and definite manner*, a subject *owned* by another. Take, for instance, a right of way over another's land. Now, according to this definition, the capital difference between *ownership* and *servitus* is the following: The right of dealing with the subject which resides in the owner or proprietor, is larger, and, indeed, *indefinite*. That which resides in the party who is invested with a right of servitude is narrower and *determinate*. But in respect of that great distinction which I am now endeavouring to illustrate, the Right of Ownership or Property, and a Right of Servitude, are perfectly equivalent rights. *Servitude* (like ownership) is a *real right*. For it avails against *all mankind* (including the owner of the subject). Or (changing the expression) it implies an obligation upon *all* (the owner again included) to *forbear* from every act inconsistent with the exercise of the right.

Vol. III, page 13.

II. (a). Speaking generally, the subject of a right of servitude is also at the same time the subject of property residing in another or others. For example: if I have a right of way over a field, while the field is yours solely, or is yours jointly or in common with others, &c., &c. For this reason rights of servitude are styled by the Roman lawyers *jura in re aliend*; that is to say, rights over subjects of which the property or dominion resides in another or others. * *

(b). For the same reason, a right of servitude is styled by Mr. Bentham a *fractional* right; that is to say, a definite right of user, subtracted or broken off from the indefinite right of user which resides in him or them who bear the dominion of the subject.

Ibid., page 14.

(c). For the same reason a right of servitude is styled by Von Savigny (in his matchless treatise on the Right of Possession) a single or particular *exception* (accruing to the benefit of the party in whom the right resides) from the power of user and exclusion which resides in the owner of the thing.

Page 14.

(d). For the same reason, rights of servitude are styled by French writers "*démembrement du droit de propriété*" that is to say, detached

¹ Similarly, a *servitus* in the zemindar, upon rent, only from the ryot.

bits or fractions of the indefinite right of user which resides in him or them who own the subject of the servitude.

(e). But (as I shall show at the close of my lecture) we may conceive a right of servitude existing over a thing which, speaking with precision, has no¹ owner. We may conceive, for example, that the sovereign or State reserves to itself a portion of the national territory; but that it grants to one of its subjects, over a portion of the territory so reserved, a right² which quadrates exactly with the notion of a right of servitude; that is to say, a right to use or apply the subject in a definite manner. Now, in the case imagined, there is not, properly speaking, any right of property in the thing which is subjected to the servitude; for it is only by analogy that we can ascribe to the sovereign a legal right. Strictly speaking, the party has a right of servitude over a thing, the indefinite power of using which the sovereign or State has reserved to itself.³

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REAL
SERVITUDE.

Para. 8.
Page 14.

8. The preceding extracts relate to all kinds of servitude comprehended in the right in rem, including land tenures. The following relate mainly to land tenures:—

I. (a). In the case of *servitudes*, the right which correlates with the obligation upon the occupants of the *prædium serviens*, though not a right against all, is a right against all who may occupy that *prædium*. Although as against the actual occupant, it is an obligation attaching upon an assigned individual, and so may be considered as giving *jus ad rem*; yet it is also capable of attaching upon any of a number of unassigned persons (namely, upon any occupant of the *prædium*, independently of his successor to, or representatives of, the actual one), [as, e. g., it would attach upon a successor without title, and therefore not *successor singularis*], and in that respect gives, or correlates with, a corresponding *jus in re*. It must also be observed that there is an obligation upon all who are not occupants not to disturb.

(b). The subject of the servitude is said itself to serve:—*res servit*; *Ibid.*, page 26. which merely means that the right of servitude avails (with or without limit in respect of duration) against every person whatever who has a right of property in the subject, or who, as adverse possessor, may exercise any right of property over it.

II. Inasmuch as every servitude is a definite subtraction or exception (accruing to the party having the right of servitude) from the indefinite rights of user or exclusion which reside in the proprietor of the thing, it follows that no man has a right of servitude in a thing of which he is the owner.

As a zemindar has a right of servitude in his ryot's lands, it follows that he is not the owner of those lands:

III. (a). A real servitude (or a *real* right of servitude) resides in the party having the servitude, as being the real owner or other occupant of

¹ Waste land.

² Lord Cornwallis's gift to zemindars of merely the pergunnah rate of rent from waste lands.

³ Or which custom has given to the residents of the village adjoining the waste lands.

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XVII.REAL
SERVITUDE.
—
PART. 8, CONTD.

a determinate parcel of land,¹ or as being the owner or other occupant of a determinate building with the land whereon it is erected. And it is ** a right against every owner or occupant of *another*² parcel of land or building to a power of using the latter in some definite mode, or to a forbearance (on the part of the owner or occupant of the latter) from using the latter in some definite mode.

(b). A real servitude, therefore, supposes the existence of two distinct parcels of land, to each of which it relates. For it is a right in a given person, as being the owner or occupant of a determinate parcel of land against another given person, as being the owner or occupant of another determinate parcel of land. I use the term 'land' as including land merely, or as including land with a building erected upon it. And hence it follows that a real right of servitude is said to be annexed to the parcel of land the owner or occupant whereof hath the right of servitude. Or, in the language of the English law, it is said to be *appurtenant* to the land or messuage the owner or occupier whereof hath the right of easement, the meaning of which expressions is merely this—that the right resides in the owner or occupant, and passes successively to every such owner or occupant for the time being, from every owner or occupant immediately preceding.

(c). And hence it also follows that a real servitude (as meaning the *onus* or duty, and not the *jus servitutis*) is said to be due to one of the two parcels of land from the other; that is to say, the duty is enforced upon every owner or occupant of the one (as being such owner or occupant) for the use or advantage of every owner or occupant of the other (as being such owner or occupant). Or the duty is due from every owner or occupant of the one (as being such owner or occupant) to every owner or occupant of the other (as being such owner or occupant).

(d). And hence we may derive the origin of the metaphorical expressions, by which, in the language of the Roman law, the two parcels of land (or the two *prædia*) are contradistinguished.

(e). I have remarked above that, in every case of a right of servitude, the thing which is the subject of the right, and not the owner or other possessor of the thing, is said to be burthened with the servitude (considered as an *onus* or duty), '*res servit*,' or '*res, non-persona, servit*'; meaning that the right of servitude avails against every person whomsoever, who may happen, for the time being, to have property in the thing, or, as adverse possessor, to exercise a right of dominion over it.

(f). To borrow the technical language of the English law, *real* servitudes are appurtenant to *lands* or *messuages*. *Personal* servitudes are servitudes *in gross*, or are annexed to the persons of the parties in whom they reside. Every *real* servitude (like every imaginable right) resides in a *person* or *persons*. But since it resides in the person as occupier of the given *prædium*, and devolves upon every person who successively occupies the same, the right is ascribed (by a natural and convenient *ellipsis*) to the *prædium* itself. Vesting in every person who happens to occupy the *prædium*, and vesting in every occupier *as* the occupier thereof, the right is spoken of as if it resided in the *prædium*, and

¹ The manorial or *neej* lands of the *zemindar*.

² *Ryot's* land.

as if it existed for the advantage of that senseless or inanimate subject. The prædium is erected into a legal or fictitious *person*, and is styled '*prædium dominans*.' On the other hand, the prædium against whose occupiers the right is enjoyed or exercised, is spoken of (by a like *ellipsis*) as if it were subject to a duty. The duty attaching upon the successive occupiers of the prædium is ascribed to the prædium itself; which, like the related prædium, is erected into a *person*, and contradistinguished from the other by the name of '*prædium servitus*.'

(g). A real servitude resides in a given person as the owner or occupier, for the time being, of a given prædium. A personal servitude (or a personal right of servitude) resides in a given or determinate person, *not* as being the owner or occupier of a given parcel of land or prædium.

IV. Tithe is a *servitus* combined with an obligation (s. s.) on the occupant. A right to a part of the produce of the subject *adversus quemcunque*, with an obligation on the actual occupant to set out, &c. Vol. III, page 67.

N.B.—The zemindar's allowance out of the Government's share of the produce of the soil was of precisely the same nature as tithe; that is, it was *servitus*; and it is curious that the proportion of that remuneration was also a tithe.

9. *Servitus*, we have seen, is *jus in alienâ*; and we may conclude this notice of *servitus* with the following extracts:—*Servitus*:

I. Every *jus in re alienâ* is a fraction or particle (residing in one party) of dominion, strictly so called, residing in another determinate party. *Ibid.*, page 63.

II. A servitude over land of which another is the owner, is '*jus in re (alienâ)*'; but the right or interest of the owner is '*dominium*,' '*proprietas*,' or '*in re potestas*.' *Ibid.*, page 102.

Thus the ryot's ownership of his holding is the dominant, the zemindar's *servitus* on the holding for rent is the subordinate, right. It is the essence of a proprietary right that it is indefinite in power of user; whereas the right which the Government conferred on the zemindar was precisely defined: his *servitus* was strictly limited to the ancient customary rate of rent, and that rate, throughout Bengal, was a money rate, which zemindars were required, as a condition of the Government's covenant with them, to enter in the pottahs which it was made their duty to grant to the ryots.

10. Mr. Austin, in his classification of rights, found no place for the State's right in land. He observed:—

I. It is manifest that the State (or sovereign Government) is not restrained by positive law from dealing with all things within its territory at its own pleasure or discretion. If it were, it would not be a sovereign Government, but a Government in a state of subjection to a Government truly supreme.

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XVII.

STATE'S RIGHT
IN LAND.

Para. 10, contd.

II. Now, since it is not restrained by positive law from dealing at its own pleasure with all things within its territory, we may say (for the sake of brevity, and because established language furnishes us with no better expressions) that the State has a *right* to all things within its territory, or is absolutely or without restriction the *proprietor* or *dominus* thereof.

III. Strictly speaking, it has no *legal right* to any thing, or is not the legal owner or proprietor of any thing; for, if it were, its own subjects would be subject to a sovereign conferring its legal ownership upon it. When, therefore, I say that it has a *right* to all things within its territory (or is the absolute owner of all things within its territory), I merely mean that it is not restrained by positive law from using or dealing with them as it may please.

In India, as in other countries, the institutions of which have preserved the clearest traces of the origin of property in land, the State was not the proprietor of the soil; its right was restricted to a definite portion of the produce, even in respect of waste land brought into cultivation. This land tax, or limited share of Government in the produce, was a *servitus* upon the land of the cultivator, who, by its reclamation from waste, became the actual proprietor. In India, the Government of Lord Cornwallis transferred to the zemindars this *servitus*, less the amount which was settled with the Government on each zemindary as its permanent assessment.

11. Mr. Austin's account of the functions of titles explains with singular felicitousness the need of the legal fiction by which zemindars, when vested by Government with the right of *servitus*, were declared to be proprietors of the soil. He defined titles and their functions as follows :—

I. (a). Rights may be divided into two kinds :—

(1). Some are conferred by law, upon the persons invested with them, through intervening facts to which it annexes them as consequences.

(2). Others are conferred by the law, upon the persons invested with them, immediately or directly; that is to say, not through the medium of any fact distinguishable from the law or command which confers or imparts the right.

(b). Taking the term 'title' in a large and loose signification (and also as measuring a fact investing a person with a right), a right of either kind may be said to begin in a title. For, in that large and loose signification, title is applicable to *any* fact by which a person is invested with a right: it is applicable to a law or command which confers a right *immediately*, as well as to an intervening fact through which a law or fact confers a right *mediately*.

Vol. III,
page 90.

Ibid,
page 90.

(c). For though, to some purposes, we oppose *law* and *fact*, a law or other command is itself a *fact*. And where a law confers a right immediately (as in the grant of a monopoly by a special Act of Parliament), the law is the only fact whereon the right arises, and it is therefore the *title* (in the large and loose signification of the expression) by which the person is invested with a right.

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—
KINDS OF
PRIVILEGES.
—
Para. 12.

(d). But taking the term 'title' with a narrower and stricter signification, it is not applicable to laws which confer rights *immediately*, but is applicable only to the *mediate* or *intervening* facts *through* which rights are conferred by laws. In respect of this narrower and stricter signification, the rights of the two kinds (a 1 & 2) which I am now considering may be distinguished by the following expressions:—

(1). A *right* which is annexed by law to a mediate or intervening fact may be said to originate in a *title*.

(2). A right which is conferred by a law without the intervention of a fact distinct from the law that confers it may be said to arise from the law directly or immediately; to arise *ipso jure*; to arise by *operation of law*, or by *mere* operation of law. Rights of this latter class are few and comparatively unimportant, *viz.*, those which are strictly *personal privileges*.

11. *Functions* of titles are the reasons for which rights are commonly conferred by laws through titles, and for which facts of certain descriptions are selected to serve as titles, in preference to facts of other descriptions.

12. Referring to I (d) 2 of the preceding paragraph, Mr. Austin proceeded to distinguish between (1st) hereditary or transmissible and assignable privileges, and (2nd) other *personal* privileges, in a way which determines the title of zemindars as appertaining to the first of these two classes of *personal* privileges.

I. Every privilege, properly so called, is a strictly personal privilege; *Ibid.*, page 93. that is to say, an anomalous right (or an anomalous immunity from duty) which is conferred by a law (also called a privilege) on a specifically determined person (individual or complex) as being that very person. For example, a monopoly granted to Styles, as being the individual Styles, is a strictly personal privilege. It is given to the very individual as being the very individual, and therefore is not assignable or transmissible to his representatives. A monopoly granted to a corporate body, as being that very body, is also a personal privilege. For it is not exercisable by any but the complex person to whom it is granted specifically.

II. But though every privilege, properly so called, is, as it seems to me, a strictly personal privilege, the term is extended to certain anomalous rights (or to certain anomalous immunities from duty or obligation) which are not conferred on specifically determined persons as being those very persons. For example—

(a). Certain so-called 'privileges are *privilegia rei*, or privileges conferred on *prædia*; meaning by a *privilegium rei*, or a *privilegium* conferred

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Para. 12, contd.

on a *prædium*, a privilege conferred on its successive owners or occupants as being such owners or occupants.

(b). And of *personal* privileges (or of privileges conferred upon persons as *not* being owners or occupants of specifically determined *prædia*) some are transmissible and assignable to the heirs and alienees of the grantees, and are not exclusively exercisable by the very grantees themselves.

III. But strictly speaking, a *privilegium rei* (or a privilege granted to the occupants of a given *prædium*) is not a privilege. It is not granted to the parties as being those very parties, but as being persons of a given class, or as being persons who answer to a given generic description—as being owners or occupants of the *prædium* or parcel¹ of land whereon by an ellipsis the privilege is said to be conferred.

Ibid., page 91.

IV. A so-called personal privilege transmissible to heirs or assigns, is, in so far as it is so transmissible, in the same predicament with a *privilegium rei*. In respect of the person to whom it is first granted, it may be deemed a privilege. For, in respect of that person, it is granted to a party specifically determined as bearing his individual or specific character. But, in respect of the heirs of that person, or in respect of the persons to whom he may assign it, it is not a privilege, properly so called. The law confers it upon them, not as being specifically determined persons, but as being persons of generic descriptions or classes; that is to say, as being the persons who answer to the description of his heirs, or as being persons within the description of his alienees. And, accordingly, although the first grantee may acquire by the law directly, it is utterly impossible (as I shall show immediately) that his heirs or alienees should take from the law without the intervention of a title.

13. A strictly *personal privilege* is confined to the person on whom the law or the sovereign bestowed it. The function of a title is to indicate the person to whom belongs an alienable or heritable right, or an alienable or heritable privilege, which latter is of a class of personal privileges improperly so called :

I. A privilege properly so called, or a strictly personal privilege not transmissible, may be conferred by the privilege (as meaning the law which confers it) immediately or directly; that is to say, without the intervention of a fact distinguishable from the law itself. All that is necessary to the creation of the right is the designation of the specific person by his specific character or marks, and a declaration or intimation that the right shall reside in that specified party.

II. But where a right is not properly a privilege (or is not conferred on a specific person as being that specific person), the right arises of necessity through a *title*—through a fact distinguishable from the law conferring the right, and to which the law annexes the right as a consequence or effect.

(a). For example: if you acquire by occupancy, or by alienation, or by prescription, you do not acquire as being the individual *you*, but

¹ e.g., the neej, seer, or manorial lands of zemindars.

because you have occupied the subject, or have received it from the alienor, or have enjoyed it adversely for a given time, agreeably to the provision of the rule of law which annexes the right to a fact of that description.

(b). And the same may be said of the privileges improperly so called, which are either *privilegia rei* (or privileges annexed to *prædia*) or are so-styled personal privileges passing to heirs or alienees. It is as being the occupant of the thing, and not as being the very person who then happens to occupy it, that the occupant of the thing acquires the so-called privilege. And it is as being the heir or alienee of the first grantee, and not as being the very person who is heir or alienee, that the heir or alienee of the first grantee takes the privilege mis-styled 'personal.'

III. (a). In short, wherever the law confers a right, *not* on a specific person as being such, the law of necessity confers the right through the intervention of a title. For, by the supposition, the person entitled is not determined by the law through any mark specifically peculiar to himself. And if the right were not annexed to a title, it follows that the person designed to take it could not be determined by the law at all.

(b). Instead, therefore, of determining directly that the right shall vest or reside in a specifically determined person, as being such, the law determines that the right shall reside in any person whatever who shall stand in some given relation to a fact of some given class.

IV. I will now briefly advert to the functions of titles; or, in other words, to the reason for which rights and duties are commonly conferred and imposed through titles, and for which *facts of some kinds are selected* to serve as titles, in preference to facts of other kinds.

(a). It is, I believe, impossible that every right and duty should be conferred and imposed by the law immediately. For, on that supposition, all the rights and duties of every member of the community would be conferred and imposed on every member of the community by a system or body of law specially constructed for his peculiar guidance, since every right or duty conferred or imposed by the law immediately is conferred or imposed on a person determined by the law specifically.

(b). It is only in comparatively few and unimportant cases that rights or duties can be created or extinguished by the mere operation of the law; generally speaking, rights must be conferred and extinguished, and duties imposed or withdrawn, through titles.

(c). Independently, therefore, of every other consideration, titles are necessary as marks or signs to determine the commencement of rights or duties, and to determine their end.

(d). Titles are necessary, because the law in conferring and imposing rights and duties, and in divesting them, necessarily proceeds on general principles or maxims. It confers and imposes on, or divests from persons, not as being specifically determined, but as belonging to certain classes. And the title determines the person to the class.

14. Applying these extracts to the matter in hand, it appears that—

I. Under native rule, the zemindar's, as a strictly personal privilege, was restricted to his life, and was conferred by *sunnud* on his successor.

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LEGAL FICTITIOUS
OF ZEMINDAR'S
PROPRIETARY
RIGHT.

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RIGHT.

Para. 14, contd.

II. When the Government of Lord Cornwallis determined to transmute this strictly personal privilege into a heritable alienable right, they were forced to confer the title mediately through a fact; and the fact which they selected was the zemindary, with its neej or seer lands, which were, or were constituted, the private property of the zemindar.

III. The personal privilege thus transmuted into a heritable alienable right was that of receiving from the cultivators of land the Government's share of its produce, in a fixed proportion in Behar, and up to an amount, per beegah, fixed in money, in Bengal. Out of this limited demand on the cultivator or ryot, the zemindar paid to the Government on his whole zemindary a certain fixed amount as its permanent assessment.

IV. The personal privilege was, in fact, a right of *servitus*, and, like that right (para. 13, section IIb), it was conferred through the medium of the private lands, and their appanage the public lands which constituted the zemindary.

V. The privilege conferred was only part of what belonged to Government, *viz.*, the public tax upon the land; its bestowal on the zemindar as a heritable alienable right was without prejudice to the rights of the cultivators or ryots, which were expressly reserved by the Government in the regulations which form the deed of the permanent settlement.

VI. The zemindar could trace his heritable and alienable right of *servitus* on the ryot's holding only up to the Government grant in 1789-93. The proprietary right of the cultivator in the holding was derived from a custom more ancient than law, and long anterior to the permanent settlement.

Titles.

15. Mr. Austin, proceeding with his disquisition concerning titles in general, observed:—

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I. Titles (or the facts *through* which the law confers and divests rights) are divisible into *simple* and *complex*.

II. A title may consist of a fact which is deemed *one* and *indivisible*. Or a title may consist of a fact which is *not* deemed one and indivisible, but is esteemed a number of single and indivisible facts compacted into a collective whole.

III. And here it is obvious to remark that every title is really complex. In the case, for example, of acquisition by occupancy (which perhaps is the least complex of all titles), the title, though deemed simple, consists, at the least, of three distinguishable facts, *viz.*:—

(a). The negative fact that the subject occupied has no previous owner.

(b). The positive fact of the occupation, or of the apprehension or taking possession of the subject.

(c). And the positive fact of the intention, on the part of the occupant, of appropriating the subject to himself, *animus rem sibi habendi*.

IV. Hence, the terms 'simple' and 'complex,' as applied to titles, are merely relative expressions. For one and the same title as viewed from different aspects, or one and the same title as considered to different purposes, may be simple *and* complex. The distinction of titles into 'simple' and 'complex' is only founded on a difference of degree. Though all titles are complex, some are more complex than others.

V. According to Mr. Bentham, the distinguishable facts which constitute a complex title are divisible, in some cases, into *principal* and *accessory*. Looking at the *rationale* of the distinction which he seems to have in view (and which is a distinction of great practical moment), I should think that *essential* or *intrinsic* and *accidental* or *adventitious* would be more significant than *principal* and *accessory*. The *rationale* of the distinction appears to be this—

(a). Titles serve as signs or marks to denote that such or such rights have vested in such or such persons, &c., &c. In other words, it is through the medium of *titles* (except in the comparatively few and comparatively unimportant cases, wherein rights and duties are conferred and imposed by the law *immediate*, or are divested and withdrawn by the law *immediate*) that the respective rights and duties of the several members of the community are distributed or assigned. Setting aside those few unimportant exceptional cases, persons are invested and burthened with rights and duties, or are divested and discharged of rights and duties, not as being determined by their specific or peculiar characters, but as belonging to *classes* of persons. And it is through the medium of the various titles that they are determined respectively to those various classes.

(b). But it is seldom that a right or a duty is annexed to a title, &c., merely because the title serves as such a mark. For if the title merely served as a mark to fix the commencement or determination of the right or duty, almost any fact might serve the turn, as well as the fact which *is* the title. There are generally certain reasons, derived from the nature of the fact which serves as a title, why such or such a right should be annexed to that fact rather than another; why such or such a duty should be annexed to that fact rather than another; or why that fact rather than another should divest such or such a right or duty.

(c). Independently of the title serving to mark that this or that person has been invested or burthened with this or that right, or this or that duty, there are generally or always reasons, derived from the nature of the fact which *is* the title, why the given person should be so invested or burthened, through or in consequence of that very fact.

(d). Now—

(1). It may happen that, looking at the reasons or purposes for which a given right is annexed to a given title, *all* the facts of which the title constituted are of its very essence. In other words, the right could not arise (consistently with those reasons or purposes) through or in consequence of the title, if *any* of the simple facts into which the title is resolvable were not an ingredient or an integrant part of it. But—

(2). It may also happen that, looking at the reasons or purposes for which a given right is annexed to a given title, one or more of the facts

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Para. 15, contd.

of which the title is constituted are *not* of its very essence. In other words, the right might arise (consistently with those reasons or purposes) through or in consequence of the title, though one or more of the facts of which the title is compounded were *not* constituent parts of it.

(3). For example: looking at the reasons for which a convention is made legally obligatory, or for which legal rights and duties are conferred and imposed on the parties to the agreement, a promise by the one party, and an acceptance of the promise by the other party, are of the essence of the title. But, in certain cases, a convention is not legally binding, unless the promise be reduced to writing, and the writing be signed by the promisor; or unless the promise be couched in a writing of a given form; or (generally) unless the contracting parties observe some solemnity which has no necessary connexion with the promise and acceptance.

(4). Now, though the given solemnity, let it be what it may, is in all cases a constituent part of the title, it is not of the essence of the title. For, looking at the general reasons for which conventions generally are made obligatory, or to the particular reasons for which rights and duties are annexed to conventions of a particular class, the right and duty might arise (consistently with those reasons), although the solemnity were no portion of the title. The solemnity may be convenient evidence of that which is essential to the title, but though it is a part of the title, it is not necessarily such.

(e). Now, where the right might arise (consistently with the reasons for which it is annexed to the title), though some of the facts constituting the title were not component parts of it, the several facts into which the title is resolvable may be divided into *essential* and *accidental*, *intrinsic* and *adventitious*, or (in the language of Mr. Bentham) *principal* and *accessory*. The facts which are essential and principal are part of the title, because they are absolutely necessary to the accomplishment of the purposes for which the right is annexed to the title by the lawgiver. But the facts which are accidental or accessory are constituent parts of the title, not because they are *necessary* to the accomplishment of those purposes, but for some reason foreign to those purposes, or merely to render their accomplishment more sure or commodious.

VI. (a). Where some of the elements of a title are accidental or accessory, they (generally speaking) are merely subservient to the essential or principal parts of it. For example, they serve as *evidence*, preappointed by the law, that that which is substantially the title has happened. This is the case wherever tradition or delivery of the subject, or a writing with or without seal, or an entry or minute of the fact in a register, or any other solemnity of the like nature, is a constituent part of a valid alienation of a thing of a given class.

(b). The essentials of the alienation, as between the alienor and alienee, are a free will and intention on the part of the former to divest himself of the right and to invest the other with it; an acceptance of the proffered right by the alienee; and some fact or another evincing or signifying such intention and acceptance. The tradition, the writing, the entry in the register, or the other solemnity, is *merely evidence*, required or preappointed by the law, of that which is *essentially* the title.

(c). *Some* evidence of the intention and acceptance is indeed absolutely necessary. But evidence other than the solemnity, which is a constituent part of the title (as, for example, a verbal declaration), might also serve as evidence of the intention and acceptance. The case of a writing, or other solemnity, which is merely preappointed evidence of the facts that are essentially the title, but which nevertheless is a constituent part of the title, shows clearly the nature of the distinction between the essential or principal and the accidental or accessory parts of a title.

(d). The evidentiary fact is made part of the title, or is rendered necessary to the validity of the title, in order that that evidence of the substance of the title, which the lawgiver exacts, may be provided by the party or parties with whom the title originates.

VII. (a). The invalidity or nullity of the title, in case the evidentiary fact be not a constituent part of it, is the *sanction* of the rule of law by which the evidence is required. But it is clear that the rule of law might be sanctioned¹ otherwise; and that if it were sanctioned otherwise, the preappointed evidence, though still requisite, would be no part of the title.

(b). For example: the absence of the given solemnity, instead of nullifying the title (or being made a presumption, *juris et de jure*, that the title has not accrued), might be made a presumption *prima facie*; that is to say, a presumption which the party insisting on the title might be at liberty to rebut, by explaining the reason why the prescribed solemnity had not been observed, and by producing evidence *other* than the preappointed solemnity, that the title *had* accrued.

(c). Or the absence of the given solemnity might be visited on the party bound to observe it, not by nullifying his title, but by punishing him with a pecuniary fine (as, for instance, where a document of title is unstamped).

(d). And on either of these suppositions, the prescribed solemnity, though still prescribed or exacted, would not be *indispensable* evidence of the *substance* of the title, or (what is the same thing) would not be a *constituent part* of the *whole* title. For it is manifest that, wherever an evidentiary fact is indispensable evidence of a given title, *that* evidentiary fact is a component part of the title, although it is not an *essential* part, but is merely an *accidental* or *adventitious* one.

VIII. In many cases it is not easy to distinguish the essential or principal from the accidental or accessory elements of a title. This, for example, is the case where an accidental element is made a part of the title—not absolutely, but only in a qualified manner. For *some* evidence of the title is indispensable or necessary, inasmuch as the title could not be sustained (in case it should be impugned) if some evidence of it be not forthcoming or producible.

IX. The pre-appointed evidence is therefore an accidental or accessory part of the title, not because *evidence* is not essential to the validity of the title, but because evidence of the *class* or *description* which the law preappoints or prescribes is not the *only* evidence by which the title might be sustained. The law might leave the parties to provide what evidence they pleased of the title; and might empower the tribunals to

¹ As is done in the Law of Prescription or Limitation.

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admit the evidence provided by the parties, if they deemed it satisfactory. By determining, therefore, that evidence of a *sort* shall be indispensable, the law adjoins to the title an element which is properly accidental or accessory.

16. Respecting *usucapion*, Mr. Austin wrote as follows :—

I. The effect of *usucapion* (*a species of prescription*) is this: It cures the fault which vitiates tradition or delivery, where the party from whom the delivery proceeds has not the right *in rem* which he affects to transfer. Here the tradition by itself is inoperative; though, coupled with subsequent possession on the part of the alienee, it may give him the right *in rem* after a certain interval. But in order that the alienee may benefit by his subsequent possession, *bona fides* is requisite. His subsequent possession works nothing, or, in other words, there is no *usucapion* unless he believes, at the time of the delivery, that the person affecting to alien is competent to pass the right. But this he can scarcely believe unless the tradition or delivery be made in the legal manner; unless the tradition or delivery *would* transfer the right, supposing that the party who makes it *had* the right to transfer. Consequently, '*justus titulus*,' '*justum initium*,' or '*justa causa*,' is a condition precedent to *usucapion*; for it necessarily precedes the tradition by which the possession is preceded, and upon which the possession operates. The contract which is the inducement to the tradition is the *titulus ad acquirendum*. The vicious tradition, and the possession which purges it of the vice, constitute the *modus acquirendi*.

II. Now, in these cases, the division of the entire acquisition into a *mode of acquisition* and a *title to acquire*, is intelligible. But in many cases it were utterly senseless. Take, for example, the case of occupation, *i. e.*, acquisition by *apprehension* or *seisin*, of a subject which belongs to no one (*res nullius*). Here the entire acquisition is a simple and indivisible incident. You may call that simple incident a *mode of acquisition*, or you may call it a *title*. But to split it into a *mode of acquisition* and a foregoing title is manifestly impossible.

17. Applying these extracts to the subject in hand, it appears that—

I. When land which is *res nullius* is acquired through the cultivation of it, the possession thereof by the cultivator and his descendants constitutes a perfect title, which is free from accidental or accessory elements. In such cases *onus* of proof does not rest on the possessor, but on him who seeks to disturb possession.

II. Accessory elements enter into title only on the first or on any subsequent transfer after the original acquisition of the simple title. Defects arising during these transfers, in the accidental or accessory elements of title, are condoned under the law of limitation. Up to a certain point *onus* of proof rests with the possessor, in respect of titles clogged with accessory elements.

III. Until the permanent settlement, the title of the resident cultivators in a village to their respective lands or holdings was a title to land originally *res nullius*, which title had been acquired mainly through inheritance from those who had brought it into cultivation, and partly by themselves reclaiming it from waste.

IV. The title was a simple title, such as in I; and the payment of the land tax or established customary *pergunnah* rate of rent for the lands did not derogate from the title.

V. Nor was it encumbered with an accidental or accessory element when the regulations of the permanent settlement required the zemindar to give to each ryot a pottah specifying the quantity of land he held and the amount of rent which he was to pay. According to the minutes of Lord Cornwallis and Sir John Shore, the pottah was designed for the ryot's protection as a simple record of the utmost which the zemindar could demand from him; it was not an essential or an accidental fact of the ryot's title to occupancy; it was simple evidence of the amount which the zemindar and ryot had agreed upon as expressing the customary *pergunnah* rate of rent.

VI. On the part of a resident cultivator in a village, his title to occupy on payment of the established *pergunnah* rate of rent was outside the pottah, or record of what he should pay as rent; and, in accordance with I, no burthen of proving title rested upon him, unless he claimed to pay less than the ancient established *pergunnah* rate, which, as existing in 1793, was immutable under the regulations of that year.

18. Respecting "custom," the following may be quoted :— Custom.

I.—CYCLOPÆDIA OF POLITICAL, CONSTITUTIONAL, AND FORENSIC KNOWLEDGE.

(a). A custom, to be valid, must have been used 'from time whereof the memory of man runneth not to the contrary.' This is "prescription," or "title by prescription;" and more accurately describes what is commonly called "time immemorial," which means, says Littleton, "that no living witness hath heard any proof or had any knowledge to the contrary," and, as Lord Coke adds, "that there is no proof, by record, or writing, or otherwise, to the contrary."

(b). A custom must also be certain as to the description of parties benefited, and compulsory, without its depending on the caprice of any third person whether it can be acted on or not.

(c). Local custom varies from prescription in this: local custom is alleged in legal forms as existing not in any person certain, but within

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a certain named district, without showing any legal cause or consideration for it; whereas prescription must have a preserved legal origin, and is either a personal right, always claimed in the name of a person certain and his ancestors, or those whose estate he has, or by a body politic and their predecessors, or else is in a *que* estate; that is, a right attached to the ownership of a particular estate, and only exercisable by those who are seised of it.

II.—BLACKSTONE'S COMMENTARIES.

(After stating the foregoing rules for determining the validity of custom)—

(a). Customs ought to be *certain*. A custom to pay two pence an acre in lieu of tithes is good, but to pay sometimes two pence and sometimes three pence, as the occupier of the land pleases, is bad for its uncertainty. Yet a custom to pay a year's improved value for a fine on a copyhold estate is good, though the value is a thing uncertain; for the value may at any time be ascertained; and the maxim of law is, *id certum est, quod certum reddi potest*.

The conditions in section I are fulfilled in the custom of the occupancy right of the resident cultivators in a village, and the condition in section II is fulfilled by their payment for these lands of the established customary rate of the *pergunnah*. The Regulations of 1793 did not interfere with the custom under which occupancy right of waste land, subject to payment of the established *pergunnah* rate, was acquired; for those regulations restrained the *zemindar* from exacting more than the established *pergunnah* rate of rent from any class of *ryots*.

Right of
occupancy.

19. It is established in the two preceding paragraphs (1) that the resident cultivator's title to his land remained unaffected by the Pottah Regulations of 1793; (2) that it rested on possession, through inheritance or by acquisition, of what originally was *res nullius*; (3) that the title was not encumbered with accidental or accessory elements; (4) that the custom under which the residents of a village could cultivate its waste lands, and acquire occupancy rights therein, was not interrupted or closed by the Regulations of 1793. At the same time, the settlement of 1793 was designed to be permanent for both the *ryot* and the *zemindar*. It follows, therefore, that the custom of resident cultivators' rights remained unaffected after 1793; and that the bulk of the cultivators in 1859 were those who had occupancy rights. It is testified that but comparatively few *ryots* in 1859 held lands under *pottahs*; that is, held as non-resident cultivators.

20. Accordingly, when Act X of 1859 withdrew the right of occupancy from those who had not occupied for twelve years, without distinguishing between non-resident cultivators and the resident descendants of resident cultivators, the legislature encroached upon rights which the permanent settlement had secured to ryots; though it did so under a delusion that it was benevolently conferring a right of prescriptive occupancy on holders for more than twelve years, who needed no such prescription.

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XVII.

LAW OF POSSESSION.
Para. 20.

21. In the Standard Library *Cyclopædia of Political and Forensic Knowledge*, the author of the article on Possession gives, among others, the following extracts from Savigny's work on the Law of Possession:—

Law of possession.

I. "All the definitions of possession are founded on one common notion. By the notion of possession of a thing we understand that condition by virtue of which not only are we ourselves physically capable of operating upon it, but every other person is incapable. This condition, which is called detention, and which lies at the foundation of every notion of possession, is no juristical notion, but it has an immediate relation to a juristical notion, by virtue of which it becomes a subject of legislation.

II. "As ownership is the legal capacity to operate on a thing at our pleasure, and to exclude all other persons from using it, so is detention the exercise of ownership, and it is the natural state which corresponds to ownership as a legal state.

III. "If this juristical relation of possession were the only one, everything concerning it that could be juristically determined would be comprehended in the following positions: the owner has a right to possess; the same right belongs to him to whom the owner gives the possession; no other person has this right.

IV. "But the Roman law, in the case of possession as well as of property, determines the mode in which it is acquired and lost; consequently, it treats possession not only as a consequence of a right, but as a condition of rights. Accordingly, in a juristical theory of possession, it is only the right of possession (*jus possessionis*) that we have to consider, and not the right to possess (called by modern jurists *jus possedendi*), which belongs to the theory of property.

V. "We now pass from the notion of mere detention to that of juristical possession, which is the subject of this treatise. * * * The questions we have to consider are—whether possession is to be considered as a right, and whether as a *jus in re*.

(a). "The first and simplest mode in which possession appears in a system of jurisprudence consists in the owner having the right to possess; but we are here considering possession independent of ownership, and as the source of peculiar rights. The former of these two questions,¹ therefore, may be expressed thus: in what sense has 'possession' been

¹ Whether possession is to be considered as a right.

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—
Para. 21, contd.

distinguished from 'ownership'? a mode of expression which has been used by many writers.

(b). "In the second place, we must determine how the different senses in which 'possession' occurs in the Roman law are distinguished from one another by the mode of expression; and particularly what were the significations of *Possessio* generally, and *Possessio naturalis*, and *Possessio civiles*, among the Roman jurists.

VI. "In the whole system of Roman law there are only two consequences which can be ascribed to possession of itself, as distinct from all ownership, and these are Usucapion and Interdicts.

VII. "The foundation of usucapion is the rule of the twelve tables, that he who possesses a thing one or two years, becomes the owner. In this case, bare possession, independent of all right, is the foundation of property, which possession must indeed have originated in a particular way, in order to have such effect; but still it is a bare fact, without any other right than what such effect gives to it. Accordingly, it is possession itself, distinct from every other legal relation, on which usucapion, and consequently the acquisition of ownership, depends.

VIII (a). "Possessional interdicts are the second effect of possession, and their relation to possession is this: possession of itself being no legal relation, the disturbance of possession is no violation of a legal right, and it can only become so by the circumstance of its being at the same time a violation of a legal right.

(b). "But if the disturbance of possession is effected by force, such force is a violation of right, since every forcible act is illegal; and such illegal act is the very thing which it is the object of an interdict to remedy. All possessional interdicts, then, agree in this: they presuppose an act which in its form is illegal.

(c). "Now, since possessional interdicts are founded on such acts as in their form are illegal, it is clear why possession, independent of all regard to its own rightfulness, may be the foundation of rights.

(1). "When the owner claims a thing as his property (*vindicatio*), it is a matter of perfect indifference in what way the other party has obtained possession of it, since the owner has the right to exclude every other person from the possession of it.

(2). "The case is the same with respect to the interdict by which the *nusio en possessionem* is protected; this interdict is not a possessional interdict, for the *nusio* itself gives no possession, but it gives a right to detention, and this right is made effective in the same way as in the case of property.

(3). "On the other hand, he who has the bare possession of a thing, has not, on that account, any right to the detention; but he has a right to require from all the world that no force shall be used against him. If, however, force is used and directed against his possession, the possessor protects himself by means of the interdicts. Possession is the condition of these interdicts, and in this case, as in the case of usucapion, it is the condition of rights generally.

IX. "Most writers take quite a different (to VIIIc, 2 and 3) view of the matter, and consider every violation of possession as a violation of a legal right, and possession consequently as a right of itself, namely, presumptive ownership, and possessional plaints as provisional vindica-

tions. This last, which is the practical part of this opinion, is completely confuted in a subsequent part of this treatise; but it is proper to show here how far such a view is true, as this may be a means of reconciling conflicting opinions.

(a). "The formal act of illegality above mentioned is not to be so understood as if possessional interdicts were a necessary consequence of the independent juristical character of force, and obviously sprung out of it. This consequence of force, namely, that possession of the thing must be restored to the person who has been ejected, without regard to the question whether or not he has any right to the thing, is rather, simply, a positive rule of law.

(b). "Now, if we ask the reason of this kind of protection being given against force, that is, why the ejected party should recover the possession to which he may possibly have no title, it may be replied that the reason is the general presumption that the possessor may be the owner.

(c). "So far, then, we may view possession as a shadow of ownership, as a presumed ownership; but this view of the matter only extends to the establishment of the rule of law in general, and not to the legal reason for any particular case of possession. This legal reason is founded rather in the protection against the formal injury; and accordingly possessional interdicts have a completely obligatory character, and can never be viewed as provisional vindications."

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LAW OF POSSESSION.
—
Para. 22.

22. The writer in the *Cyclopædia* continued:—

I. The special object of Savigny's essay may be collected from these passages. The legal principles here developed are applicable to every system of jurisprudence. There must always be a distinction between the right to possess, which is a legal consequence of ownership, and the right of possession, which is independent of all ownership. The owner of a thing may not have the possession, but he has a right to the possession, which he must prosecute by legal means.

II. The possessor of a thing, simply as such, has rights which are the consequences of his possession, that is, he is legally entitled to be protected against forcible ejection or fraudulent deprivation; his title to a continuance of his possession is good against all persons who cannot establish their right to the thing, and this continued possession may, according to the rules of positive law in each country, become the foundation of ownership.

III. It may be that the acquisition of possession may also be the acquisition of ownership, or that the acquisition of possession may be essential to the acquisition of ownership. Thus, in the case of occupation, the taking possession of that which has no owner, or the acquisition of the possession, is the acquisition of the ownership. Also, when a thing is delivered by the owner to another, to have as his own, the acquisition of the possession is the acquisition of the ownership. In these examples, ownership and possession are acquired at the same time, and there is no right that belongs to the possessor as possessor; his rights are those of owner.

IV. But the form and mode of the acquisition of the possession, viewed by itself as distinct from the acquisition of the ownership, will

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[Para. 22, contd.]

also be applicable to the cases of possession when possession only is acquired. For possession of itself is a bare fact, though it has legal consequences; and being a bare fact, its existence is independent of all rules of the civil law or of the *jus gentium*, as to the acquisition and loss of rights.

V. Having shown that in the Roman law all juristical possession has reference to usucapion and interdicts, and that the foundation of both is a common notion of juristical possession, Savigny proceeds to determine conditions of this notion.

(a). In order to lay the foundation of possession as such, there must be detention; and there must also be the intention to possess, or the *animus possidendi*. Consequently, the *animus possidendi* consists in the intention of exercising ownership. But this ownership may either be a person's own ownership or that of another; of the latter, there is no such *animus possidendi* as makes detention amount to possession. In the former case, a man is a possessor because he treats the thing as his own; it is not necessary that he should believe it to be his own.

(b). Whether, then, we are considering possession as such, or that possession which is concurrently acquired with ownership, or which completes the acquisition of, or is the exercise of, ownership, the material facts of possession are the same.

(c). When ownership is transferred from one man to another, every system of law must require some evidence of it. But the evidence of the transfer of ownership may be entirely independent of the evidence of acquisition of possession; and also the evidence of the acquisition of possession may be inseparable from that of the acquisition of ownership.

(d). There must, then, generally, be some act which shall be evidence of the acquisition of possession, whether possession as such is obtained (1) without ownership, or (2) possession accompanied by ownership, or (3) possession as necessary to the complete acquisition of ownership, or (4) possession as simply the exercise of ownership.

23. Applying these remarks to the matter in hand, we may here interpolate a query. Until the permanent settlement, the ryots were the proprietors of their holdings, with a permanent hereditary occupancy right, and with an indefinite power of user, subject only to the payment of the land tax to an amount not exceeding the ancient established pergunnah rate. In the permanent settlement, the zemindars were declared proprietors, so called, of the soil: correctly interpreted, that declaration constituted them proprietors of simply the alienated portion of the gross land tax, which, through the greater part of Bengal, was realized in fixed money amounts, in accordance with ancient established pergunnah rates. Understanding in this sense the new proprietary right of the zemindars, it did not conflict with the resident cultivator's proprietary right. But, according to another interpretation, the ryots were expropriated, and the zemindars were constituted proprietors of the land by the

regulations of the decennial settlement afterwards made permanent. It was necessary, however, to complete the new title (as thus understood) of the zemindars, that they should take actual possession of the lands from the ryots. Was this ever done? We know that it was not.

24. The article in the Standard Library *Cyclopædia* proceeds as follows with the exposition of the principles of the law on this subject:—

I. It is remarked by Savigny “that, in the whole theory of possession, nothing seems easier to determine than the character of corporeal apprehension which is necessary to the acquisition of possession. By this fact all writers have understood an immediate touching of the corporeal thing, and have accordingly assumed that there are only two modes of apprehension: laying hold of a movable thing with the hand, and entering with the foot on a piece of land.”

II. “But as many cases occur in the Roman law in which possession is acquired by a corporeal act without such immediate contact, these cases have been viewed as symbolical acts, which, through the medium of juridical fiction, become the substitute for real apprehension.” After showing that this is not the way in which the acquisition of possession is understood in the Roman law, and that there is no symbolical apprehension, but that the acquisition of possession may in all cases be referred to the same corporeal act, he determines what it is, in the following manner:—

“(a). A man who holds a piece of gold in his hand is doubtless the possessor of it; and from this and other similar cases has been abstracted the notion of a *corporeal contact generally*, as the essential thing in all acquisitions of possession.

“(b). But in the case put, there is something else which is only accidentally united with this corporeal contact, *viz.*, the physical possibility to operate immediately on the thing, and to exclude all others from doing so. That both these things concur in the case put (a) cannot be denied; that they are only accidentally connected with corporeal contact, it follows from this, that the possibility can be imagined without the contact, and the contact without the possibility. As to the former case, he who can at any moment lay hold of a thing which lies before him, is doubtless as much uncontrolled master of it as if he actually had laid hold of it. As to the latter, he who is bound with cords has immediate contact with them, and yet one might rather affirm that he is possessed by than that he possesses them.

“(c). This physical possibility, then, is that which as a fact must be contained in all acquisition of possession; corporeal contact is not contained in that notion, and there is no case in which a fictitious apprehension need be assumed.”

III. This clear exposition of a principle of Roman law is applicable to all systems of jurisprudence which have received any careful elaboration; for the principle is in its nature general. It may be that the expounders of our law have not always clearly seen this principle, even when they have recognised it; and it may be that they have not always acted upon it.

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DELIVERY OF
POSSESSION.

Para. 24, contd.

IV. Still it will appear from various cases that the physical possibility of operating on a thing is the essential character of the acquisition of possession in the English law. In the case of *Ward vs. Turner* (2 Vez, 431) it was held by Lord Hardwicke that delivery of the thing was necessary in a case of "*donatio mortis causa*," and delivery of receipts from South Sea annuities was not held sufficient to pass the ownership of the annuities. In his judgment Lord Hardwicke observed: "Delivery of the key of bulky things, where wines, &c., are, has been allowed a delivery of the possession, because it is the way of coming at the possession, or to make use of the thing; and therefore the key is not a symbol, which would not do." In one of his chapters Savigny uses the very same example of the key, showing that it is not a symbol, but the means of getting at things which are locked up, and therefore the delivery of the key of such things, when they are sold, is a delivery of the possession.

25. It appears from these extracts that the delivery of possession must not be by symbol, but an actual delivery, by which the person inducted acquires possession in the sense of being able, physically, to operate immediately on the thing or land, and to exclude all others from doing so. There was such delivery, in the case of zemindars, if they were vested with proprietary right in only the alienated part of the Government's share of the produce of ryots' lands; but there was no such delivery, if actual proprietorship of those lands, to the dispossession of the ryots, was intended. The day before the decennial settlement, the Government had not the title to take land from resident cultivators without buying it separately from each of them, or compensating each separately for his expropriation; and even if Government could, conceivably, have had the power to withdraw from the ryot and to vest in the zemindar a proprietary right in the ryot's land, which the former did, and the zemindar did not possess, still there was no actual delivery of the land to the zemindar, in this sense; and accordingly the possession of the ryot was not disturbed by the regulations of the decennial settlement;—it remained precisely what it was before, *viz.*, a hereditary occupancy according to a custom more ancient than law. On the other hand, the zemindar not having obtained possession by actual delivery, within twelve years, or even within sixty years after the decennial settlement, any proprietary right greater than that in the alienated portion of the Government's share of the gross demand on the ryot, which, by a forced construction of the Regulations of 1793 may be held to have been vested in the zemindar by those regulations, has lapsed, it being barred now by prescription, inasmuch as possession by actual deli-

very of each ryot's holding was not given to the zemindar within twelve or even within sixty years after 1793.

26. The Government of 1793 was fully aware that a grant not completed by possession was invalid: in Regulation XIX of 1793, section 11, it was enacted that all grants for holding land exempt from the payment of revenue, made previous to the 12th August 1765, the date of the Company's succession to the dewany, by whatever authority, and whether by a writing or without a writing, shall be deemed valid, provided the grantee actually and *bonâ fide* obtained possession of the land so granted previous to the date above mentioned, &c.

27. As the Government which enacted this did not give the zemindar possession of each ryot's holding, it follows that the proprietary right in the holding was not given by the Government to the zemindar in the regulations of the decennial settlement afterwards made permanent.

28. The Standard Library Cyclopædia of Political and Forensic Knowledge contains the following respecting PRESCRIPTION:—

I. The following definition of prescription appears to be both sufficiently comprehensive and exact: "Prescription is where a man claimeth anything for that he, his ancestors, or predecessors, or they whose estate he hath, have had or used anything all the time whereof no memory is to the contrary." From this it follows that prescription may be a claim of a person as the heir of his ancestors, or by a corporation as representing their predecessors, or by a person who holds an office or place in which there is perpetual succession; or by a man in right of an estate which he holds.

II. It is essential to prescription (subject to the limitations herein-after mentioned) that the usage of the thing claimed should have been time out of mind continuous and peaceable. "Time out of mind" means that there must be no evidence of non-usage or of interruption inconsistent with the claim, and of a date subsequent to the first year of Richard I, which is the time of commencement of legal memory.

III. If it can be shown, either by evidence of persons living, of writing, or by any other admissible evidence that the alleged usage began since the first year of Richard I, the prescription cannot be maintained.

IV. Repeated usage also must be proved in order to support the prescription; but an uninterrupted enjoyment for twenty years has been considered sufficient proof where there is no evidence to show commencement of the enjoyment. * * It is said that prescription is founded on the assumption of an original grant, which is now lost.

29. These rules of prescription at common law apply to privileges or exemptions, as well as to rights to land arising

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ADVERSE
POSSESSION.
Para. 26.

APP.
XVII.ADVERSE
POSSESSION.

Para. 20, contd.

out of adverse possession. The principle of the law, as affecting adverse possession, is indicated in the following extract from Burton's Law of Real Property:—

I. If a person be disseised or otherwise unlawfully deprived of his land, he may enter when he sees his opportunity, and so restore or commence his own seisin. So if his reversion or remainder in any land be illegally diverted, he may nevertheless enter when the time for his possession has arrived; and if the act of divestment amount to a forfeiture of the only preceding particular estate, he may enter immediately.

II. But in all these cases, until such entry, or until the remainder or reversion is reverted by the entry of the person entitled to a particular estate, the person injured has no estate which he can convey or devise; he has only a *right*, which will descend as the land, if vested in him by a mere seisin in law, would have descended; unless he *release* it to the person in actual *seisin*, or to one in whom a reversion or remainder of freehold is for the time vested.

III. This right of entry will be lost if the wrong-doer be suffered to keep possession of the land without sufficient interruption till his death, and then transmit it by immediate descent (without curtesy or power interposed) to his heir; provided that the person who has right do not labour under some disability at the time of his descent, from which he has never been free since his right accrued. * *

IV. Moreover, by Stat. 21, Jac. 1, c. 16, "for quieting of mens' estates and avoiding of suits," it is enacted in s. 1 "that no person or persons shall make any entry into any lands, tenements, or hereditaments, but within twenty years next after his or their right or title, which shall first descend or accrue to the same; and in default thereof, such persons so not entering, and their heirs, shall be utterly excluded and disabled from such entry after to be made."

30. Mr. Austin described the right of adverse possession as follows:—

I. If one person exercise a right residing in another person, but without authority from the latter, without authority from those through whom the latter is entitled, and without his adverse possession having begun *vi*, or through any of the means which fall within the name of *violence*, he acquires by his unauthorized or *adverse* exercise the anomalous right which is styled the *right of possession*, as distinguished from the *right to possess*.

II. The right of possession is that right to possess (or to use or exercise a right) which springs from the fact of an adverse possession not beginning through violence.

III. As against all but the person whose right is exercised adversely, the person who exercises the right of possession is clothed with the very right which he affects to exercise. And as against the person whose right is exercised adversely, he may acquire the very right which he affects to exercise, through the title or mode of acquisition styled *prescription*. Or (adopting a current but inadequate phrase) the rights

of possession repass, by prescription, into the right of dominion or property.

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31. The extracts in the three preceding paragraphs state the rules of prescription at common law, respecting privileges founded on usage and titles to land arising from adverse possession. The Statute law on these two divisions of the subject is contained, for adverse possession and suits relating to real property, in 3rd and 4th Will. IV, cap 27; for incorporeal hereditaments in 2nd and 3rd Will. IV, caps. 71 and 100.

RENT IS NOT AN
EVER-RECURRING CAUSE
OF ACTION.

Para. 33.

32. Acts 3rd and 4th Will. IV. cap 27, or "an Act for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto," related to Land and Rent, which words were interpreted by the Act in the following sense:—

I. "LAND" shall extend to manors, messuages, and all other corporeal hereditaments whatsoever, and also to tithes (other than tithes belonging to a spiritual or Eleemosynary Corporation Sole), and also to any share, estate, or interest in them or any of them, whether the same shall be a freehold or chattel interest, and whether freehold or copyhold, or held according to any other tenure.

II. "RENT" shall extend to all heriots, and to all services and suits for which a distress may be made, and to all annuities and periodical service of money charged upon or payable out of any land (except moduses or compositions belonging to a spiritual or eleemosynary corporation sole).

III. And be it further enacted that after the 31st day of December 1833, no person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or bring such action, shall have *first* accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.

The words "*first* accrued," which occur twice in the preceding extract, apply alike to claims for rent and to claims for land; and by placing suits for rent under the same limitation as suits respecting adverse possession of land, they discountenance any such *dictum*, as that rent is an ever-recurring cause of action, and is therefore not subject to the law of limitation.

33. A distinction is, indeed, observed between rents from tenants-at-will or those who hold under lease or contract, and other rents which are compulsory and definite, such as

APP. tithes. The former are not subject to prescription, as
XVII. observed in Stephen's edition of Blackstone, Vol. I, Book II,
Part I:—

RENT IS NOT AN
EVER-RECUR-
RING CAUSE
OF ACTION.

Para. 33, contd.

"A tenant for life, or years, or at will, or a copyholder, cannot prescribe by reason of the imbecility of these estates. For as prescription is usage beyond time of memory, it is absurd that they should pretend to prescribe for anything, whose estates commenced within the remembrance of man; and therefore the tenant for life, or for other estates short of the fee, must prescribe under cover of the tenant in fee-simple."

34. The established pergunnah rate of rent is strictly analogous to tithes. Like the latter, it was fixed in amount, or determined according to fixed rules, until the wrongdoings of zemindars obliterated traces of that ancient established pergunnah rate of 1793, which the authors of the permanent settlement designed should be permanent and immutable; it was not a matter of contract, but was determined by ancient custom; and it was obligatory on the cultivator, notwithstanding his fixed occupancy right, and his cultivating without lease. Act 2nd and 3rd, Will. IV, Cap. 100, or "An Act for shortening the time required in claims of *modus decemendi*, or exemption from or discharge of tithes," protected lands or tenements from assessment for tithes, or from enhancement of tithes, after the lapse of periods of limitation prescribed in that statute.

35. Tithes are a rent charge, or a species of rent; but it never occurred to the English legislature that rent was an ever-recurring cause of action, and that therefore tithes should be exempted from the statute of limitation.

Rules of interpretation.

36. Going back to para. 27, it may be observed that the Government, according to their own definition of the term "proprietors of the soil," used the words in a non-natural sense, in the Regulations of 1793 (Appendix XVI, paras. 34 to 38). Notwithstanding the explicit definition by Government of the restricted sense in which the words were used, eminent judges have reasoned away the rights of the ryots, through a rigidly literal interpretation of the words. Their true construction will be helped by the following extracts from Mr. Austin's Note on Interpretation, in his Lectures on Jurisprudence:—

I. The discovery of the law which the lawgiver intended to establish is the object of genuine interpretation; or (changing the phrase) its object is the discovery of the intention with which he constructed the statute, or of the sense which he attached to the words wherein the statute is expressed.

II. The literal meaning of the words wherein the statute is expressed is the primary index or clue to the intention or sense of its author. Now, the literal meaning of words (or the grammatical meaning of words) is the meaning which is attached to them by custom, that is, by all or most of the persons who use habitually the given language, or (if the words be technical) by all or most of the persons who are specially conversant or occupied with the given art or science.

III. Occasionally, the customary meaning of the words is indeterminate and dubious. What is the meaning which custom has annexed to the words is, therefore, an inquiry which the interpreter may be called upon to institute.

IV. Consequently, the interpretation of a statute by the literal meaning of the words may possibly consist of a two-fold process—namely, an inquiry after the meaning which custom has annexed to the words, and a use of that literal meaning as a clue to the sense of the legislature.

(a). The interpreter seeking the meaning annexed to the words by custom may not be able to determine it, or, having determined it, he may not be able to find in it any determinate sense that the legislator may have attached to them. And on either of these suppositions he may seek in other *indicia* the intention which the legislature held.

(b). Or, when he has determined or assured the customary or literal meaning of the words, the interpreter may be able to discover in that literal meaning a determinate or definite intention that the legislature may have entertained. And on this supposition he ought to presume strongly that the possible intention which he finds is the very intention or purpose with which the statute was made.

(c). The intention, however, of the legislature, as shown by that literal meaning, may differ, however, from its intention, as shown by other *indicia*; and the presumption in favour of the intention which that literal meaning suggests may be fainter than the evidence for the intention which other *indicia* point at. On which supposition the last of these possible intentions ought to be taken by the interpreter as, and for, the intention which the legislature actually held. For the literal meaning of the words, though it offers a strong presumption, is not conclusive of the purpose with which the statute was made.

V. It appears, then, from what has foregone, that the subjects of the science of interpretation are principally the following, namely (1) the natures of the various indices to the customary meaning of the words in which the statute is expressed; (2) the natures of the various indices, other than that literal meaning, to the intention or sense of the lawgiver; (3) the cases wherein the intention which that literal meaning may suggest should bend and yield to the intention which other *indicia* may point at.

VI. Having stated the object or purpose of genuine interpretation, and pointed at the subjects of the science which are conversant about it, we will touch upon the interpretation, *ex ratione legis*, through which an unequivocal statute is extended or restricted.

(a). It may happen that the author of a statute, when he is making the statute, conceives and expresses exactly the intention with which he is making it; but conceives imperfectly and confusedly the end which determines him to make it.

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RULES OF INTERPRETATION.
—
Para. 36, contd.

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RULES OF IN-
TERPRETATION.

Para. 1, contd.

(b). Now, since he conceives its scope inadequately and indistinctly, he scarcely pursues its scope with logical completeness, or he scarcely adheres to its scope with logical consistency. Consequently, though he conceives and expresses exactly the intention with which he is making it, the statute, in respect of its reason, is defective or excessive. Some class of cases which the reason of the statute embraces is not embraced by the statute itself; or the statute itself embraces some class of cases which a logical adherence to its reason would determine its author to exclude from it.

VII. (a). But, in pursuance of a power which often is exercised by judges (and, where they are subordinate to the State, with its express or tacit authority), the judge who finds that a statute is thus defective or excessive, usually fills the chasm or cuts away the excrescence.

(b). In order to the accomplishment of the end for which the statute was established, the judge completes or corrects the faulty or exorbitant intention with which it was actually made. He enlarges the defective or reduces the excessive statute, and adjusts it to the reach of its ground. For (1) he applies it to a case of a class which it surely does not embrace, but to which its reason or scope should have made the lawgiver extend it; or (2) he withholds it from a case of a class which it embraces indisputably, but which its reason or scope should have made the lawgiver exclude from it.

(c). Now, according to a notion or phrase which is current with writers on law, the judge who thus enlarges or thus reduces the statute, "interprets the statute by its reason;" or his extension or restriction of the defective or excessive statute is "extensive or restrictive interpretation *ex ratione legis*." His adjustment, however, of the statute to the reach or extent of its ground, is a palpable act of judicial legislation, and is not interpretation or construction (in the proper acceptation of the term). The discovery of the intention with which the statute was made is the object of genuine interpretation; and of the various clues to the actual intention of the lawgiver, the reason of the statute is one.

(d). But where a statute is extended or restricted in the manner which we are now considering, the actual intention of the lawgiver is not doubted by the judge. Instead of unaffectedly seeking the actual intention of the lawgiver, and using the reason of the statute as one of the various clues to it, the judge rejects an actual (though faulty or exorbitant) intention which the lawgiver palpably held. Instead of interpreting a statute obscurely and dubiously worded, the judge modifies a statute clearly and precisely expressed, putting, in the place of the law which the lawgiver indisputably made, the law which the reason of the statute should have determined the lawgiver to make.

(e). Consequently, where the judge, in show, interprets the statute restrictively, he abrogates or annuls it partially. And where the judge, in show, interprets the statute extensively, he makes of its reason a judiciary rule by which its defect is supplied. He makes of the reason of the statute a general ground of decision, which provides for the class of cases overlooked and omitted by the lawgiver. For, as a *ratio decidendi*, though not as a *ratio legis*, the reason of a statute may perform the functions of a law.

VIII. There is, it is true, an extensive or restrictive interpretation, which is properly interpretation or construction.

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RULES OF IN-
TERPRETATION.
Para. 36, contd.

(a). For the literal meaning of the words wherein the statute is expressed may not correspond to the purpose wherewith it was actually made; and the interpreter of the statute, guided by another index to the actual purpose of the statute, may abandon the meaning which custom has annexed to the words for the meaning which the lawgiver attached to them.

(b). Now, (1) if the meaning annexed to the words by custom be narrower than the meaning attached to the words by the lawgiver, the interpreter (it is commonly said) interprets the statute extensively; (2) if the customary meaning be broader than the lawgiver's, the interpreter (it is commonly said) interprets the statute restrictively. But, manifestly, the statute itself is not extended or restricted by the process which we are now considering. The very law which actually was made by the lawgiver, is also the very law which is sought and stuck to by the interpreter, who merely proportions the grammatical meaning of the words to the broader or narrower meaning with which the lawgiver used them. The interpreter extends or restricts, not the statute itself, but the literal meaning of the words wherein the statute is expressed.

APPENDIX XVIII.

ENHANCEMENT AND RECOVERY OF RENT BEFORE 1859.

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The “unearned increment” belongs to somebody. Failing the ryot, it belongs to the Government or to the zemindar. The zemindars very neatly put the argument that it belongs to them, by daily instituting suits for enhancement of rent; while the British Indian Association takes up its parable, yearly, about the sin of Government’s enhancing old taxes in British India or levying new *abwabs*. The Association also put the argument, thus, in its parable about the Public Works Cess in 1877 :—

(a.) “If it be argued that the public demand upon the land being fixed ‘for ever,’ the proprietors of land are best able to bear additional burdens, your memorialists take leave to dispute the correctness of that argument.

(b). “In the first place, it needs to be borne in mind that the immediate effect of the permanent settlement was the destruction of most of the great families which owned the land, in consequence of the crushing assessment under the permanent settlement, and that if some of the original proprietors have lately improved their position, they have done so at considerable outlay of capital, and after years of toil, trouble, and loss.

(c). “In the second place the vast majority of the proprietors of the present day have invested their capital at the market rate, in perfect confidence in the promise contained in the proclamation of the permanent settlement. It is well known that at the date of the settlement one-third of Bengal was covered with jungle, and it was the zemindars who, by giving advances to ryots” (at usurious interest), “charging no rent, or small rent, for years” (but levying prohibited cesses outside the small rents), “constructing embankments, excavating tanks, wells, and channels, settling rent-free lands upon village establishments” (who could not be expected to do zemindars’ work for nothing), “and in other ways, reclaimed the land and rendered it productive.”

2. The weakness of the second plea (c) is evident from the quotations in Appendix IV, para. 8, section V, which show that the ryots have done everything, the zemindars nothing, for the extension and improvement of cultivation. Of the cultivation it may be said that it simply “grewed,” like Topsy; nature gave to the population of Bengal a power of increase; Lord Cornwallis gave to the zemindars a monopoly of waste land; and the two gifts amalgamating, cultivation

increased. The outlay of capital by zemindars (Appendix IV, para. 8) was not worth mention. The British Indian Association has itself said in effect that, even had the zemindars been disposed to lay out capital, there was no occasion for it. In the Association's Report dated 12th May 1877, they observed: "The rice-growing lands constituted the bulk of the cultivated area of Bengal, and yielded the crop by the mere scratching of the ground as it were; and as regarded these lands, the dictum that the value of the produce, or the producing power of the land, had been increased by the agency or at the expense of the ryot" (or of the zemindar either), "did not, as a rule, hold good, inasmuch as the sun and periodical rains renovated the soil annually, without any artificial aid, except in rare instances, and the value of the produce was regulated by causes independent of the exertions of the ryot," or of the zemindar.

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3. Stripping (c) of the verbiage in which the do-nothing of the zemindars is spread out, and qualifying it further by the fact of the ryots having done everything, and the zemindars nothing, for improving and extending cultivation, the pleading in (c) is an argument that zemindars should have the unearned increment arising from the enormous millions sterling of additional value of the produce of Bengal, because they have been separately enriched by Lord Cornwallis' unwise, unconstitutional gift to them, of that third of the culturable land of Bengal which was waste in 1793.

4. The other plea is that the permanent settlement laid "a crushing assessment" on the zemindars. This serious charge is brought against Lord Cornwallis by the creations of his weak benevolence; but happily his memory is free from the stain. The charge contains, indeed, its own refutation. If the heaviness of the assessment brought large zemindaries to the hammer, and ruined the defaulters, it should have ruined the purchasers too, inasmuch as the assessment was not reduced on the occasion of the sales. But all who are conversant with the subject are aware that the sales for arrears of revenue were not attributable to the heaviness of the assessment.

5. The most fruitful cause of the sales in the early years after the permanent settlement was Lord Cornwallis' gift of waste lands to the zemindars, which made it their interest to attract ryots from other zemindaries by low rents. The large zemindaries principally defaulted after the permanent settle-

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Para. 5, contd.

ment; and it was in those zemindaries that the collections were farmed out by zemindars to farmers who subjected the ryots to such grievous exactions, that the latter took up waste land in neighbouring zemindaries or in other districts. The reality, the general prevalence of this cause, and its inevitable operation wherever it had become the zemindar's interest to bring into cultivation waste land, on reclaiming which he would not pay to Government rent for the land, are set forth in Appendix XVI, paragraph 43. This cause by itself would explain the sales; but other causes, *viz.*, fraudulent sales and mismanagement, also operated, as will be seen from the following extracts:—

I.—SIR JOHN SHORE (*June 1789*).

The character of the people may have also suggested the necessity of continuing the establishments for recording the mofussil accounts in order to guard against a diminution of the jumma. The terrors of despotism were not always sufficient to enforce the payment of the revenue. Since the arrival of Jaffur Khan in Bengal, one-half the property of the country has, at least, been transferred on account of defalcations. The formation of the zemindaries of Burdwan, Rajshahye, Nuddea, and others, will prove this.

II.—COLLECTOR OF BURDWAN (*27th February 1794*).

Fifth Report.

(a). As far as the Rajah's object can be inferred from his conduct in the late transaction, it appears to have been to embezzle as much as he could of the rents, and leave Government to look to the Ranee for the balance, which would happen in consequence. This would not subject the Ranee to any inconvenience, for being by her sex exempted from imprisonment or coercion of any kind, she would remain undisturbed till the end of the year, while the Rajah, no longer subject to restraint, would be at full liberty to try every means he might think conducive to the reduction of the assessment on the district, which appears to me to have been his aim ever since he entered into his decennial engagement; and should this scheme fail, he might then speculate in regard to any land that might be sold, to release the balance by repurchasing any mehals offered at an advantageous jumma, leaving the rest to the risk of Government, as in the case of Mundulghat, by the exchange of which disadvantageous mehal for the one he at the same time purchased in Bishenpore, he has undoubtedly gained very considerably. This mode of transferring and receiving possession of land may, for anything I know, be perfectly consistent with the public regulations, though it nevertheless appears to me to be an abuse of the inestimable privileges and immunities bestowed on landholders by the British Government, the effects of which mode of abuse have already been experienced in loss of revenue in the instance above mentioned, and in the embarrassments to which it has contributed in Bishenpore.

III.—GOVERNOR-GENERAL IN COUNCIL (27th March 1795).

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(a). Of the balance outstanding in Bengal, about one-half is due from two persons only, *viz.*, the zemindars of Beerbhoom and Rajshahye; and this failure in their payments has originated in causes wholly foreign to the administration of justice, the former having dissipated the public revenue in the most profligate extravagance and debauchery, for which, and at the instance of his own family, process has been instituted to bring him under the regulations of disqualified landholders; and the latter ascribing his balances to his inability to pay the jumma assessed on his estate, in consequence of the difficulties in which he was involved by the misconduct of the late Collector, Mr. Henckell, and of Government having prohibited him from levying certain articles of revenue from the ryots, that, as he states, formed a part of the assets on which his jumma was computed.

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Para. 5, contd.

Fifth Report.
Para. 16.

(b). The preceding facts afford the strongest ground for presuming that, where material difficulties have been experienced in the collection of the rents or revenues, they are to be ascribed chiefly to that mismanagement which has long marked the conduct of the principal zemindars in Bengal. This is an evil the correction of which is to be looked for only from time, and the operation of the principles of the regulations, which, whilst they protect the landholders in their just rights, leave them to suffer the consequences of mismanagement and breach of engagements.

Para. 19.

IV.—SELECT COMMITTEE (1812).

(a). The great proportion which the revenue bore to the produce rendered a correct adjustment indispensable between the portion which was to be sold of a zemindary and that which was not to be sold; for the part of an estate sold might, if over-rated, prove unequal in produce to defray its assessment, the consequence of which would be a loss to the purchaser, terminating in another sale for the recovery of an unavoidable balance, and ultimately obliging the Government either to assume possession of the estate, with its resources reduced below the scale of its assessment, or to render the proprietary right in it worth possessing to a new purchaser, by diminishing its assessment of revenue.

Fifth Report.

(b). By such a transaction the portion of the original estate left with the zemindar would be benefited in the exact proportion in which the assessment had been unequally distributed and over-rated on the part sold, and the Government would thereby be subjected to a permanent loss of revenue in the manner above stated. * *

(c). Deceptions, such as representing as great as possible the produce of the part of the estate distrained for sale, would be unavailing in cases where the whole estate was exposed to sale in one lot; but in the gradual dismemberment of some of the great zemindaries, they appear for a time to have been successfully practised by the confidential servants of the Rajahs of Jessore, Nuddea, Burdwan, and other defaulters of that rank; sometimes with a view to their own emolument, at others to that of their employers, but in all cases with an effect injurious to the revenue of the estate.

(d). The prevalence of these bad practices and the imperfections in the regulations are recognised in the preamble of Regulation VII of

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—
Para. 5, contd.

1799, which acknowledges that the powers allowed the landholders for enforcing payment of their rents had in some cases been found insufficient, and that the frequent and successive sales of land within the current year had been productive of ill consequences, as well towards the land proprietors and under-tenants, as in their effects on the public interest, in the fixed assessment of the land revenue. It further notices the purchases which it was believed some of the zemindars had made of their own lands in fictitious names, or in the names of their dependants, the object of which was to procure, by the indirect means which have been described, a reduction of the rate of assessment.

V.—MR. A. D. CAMPBELL'S PAPER.

When, besides annulling the engagements with ryots at less than the pergunnah rates, the Government in 1799 conferred on the new purchasers of zemindaries, under the name of auction-purchasers, the power to eject all the cultivators whose engagements were thus annulled, it is not matter of surprise that purchasers of the zemindary tenure preferred buying rather at a public auction than at a private sale, which conferred no such advantages; or that they generally availed themselves of this law to oust from their fields the hereditary cultivators possessing a right to terms independent of them, and to replace them by others dependent on their own will, who consented to higher terms.

VI.—MR. J. MILL (*4th August 1831*).

Q. 3217. Do you apprehend that the permanent settlement was originally fixed at too high a rate? I believe there was great inequality; in some cases it was found very early that the zemindars, without any apparent misconduct on their part, were unable to pay; but those failures were only partial, and I imagine it was only in a small number of cases that it could be considered as excessive at the time of the permanent settlement.

VII.—MR. A. D. CAMPBELL'S PAPER.

(a) It is difficult to trace the precise extent of these sales of the zemindary tenures. From the practice in Bengal of advertising the same zemindary for sale each time any instalment due from it fell into arrear, the total number of zemindaries advertised for sale is falsely augmented, and *occasionally exceeds the entire number in existence*.

(b) Far the greater portion also of the zemindaries advertised for sale is freed from arrear before the sale actually takes place, and therefore the number advertised forms no criterion of the number really sold.

(c) But the actual sales of the zemindary tenure in 1796 and 1797 extended to zemindaries assessed at the large sum of sicca Rs. 14,18,765, and in 1797 and 1798 to others assessed at no less a sum than sicca Rs. 22,74,076, so that in the year 1815 it was estimated that "probably one-third, or rather one-half of the landed property in the province of Bengal, may have been transferred by public sale on account of arrears of revenue."

The remark in the passage quoted at the close of extract (c) proceeded from a misconception by the authorities, in 1815, of the facts stated in extracts (a) and (b) and in sections I to V. The fact that the estates sold at several years' purchase of the revenue, was conclusive against the oppressiveness of the assessment.

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6. It appears from the preceding extracts that—

I.—The statistics were exaggerated, both as to the number of estates sold and the still smaller number of proprietors sold up.

II.—They were also deceptive as to number and amount of sales due to heaviness of assessment, inasmuch as—

(a.) The sales to a large extent were brought about to defraud the revenue; the zemindars surrendering for sale, by wilful default in paying revenue, parts of estates bearing (1) an unduly large proportion of the Government assessment (in which case the distrained portion was sold outright); (2) an unduly small proportion of the assessment (in which case the zemindar bought back this portion *benamée*, or in another name, and then made a fresh default on the remainder to surrender it for sale). The latter was the more prevalent, because the more artful and successful form of fraud; it also exaggerated the number of sales, by requiring two sales for each fraud respecting one alienated or surrendered portion.

(b.) Numerous other sales were brought about by the zemindars, because (1) they conveyed a clear indisputable title to the purchaser, and so were preferred as the form of transfer even for really private sales; (2) they gave the auction purchaser special power to evict ryots; and the zemindar to acquire this power sold portions of his estate for arrears of revenue, only to buy them back *benamée*.

(c.) A large portion of the remaining sales arose from the levy of rack-rents, which drove ryots to waste lands offered to them on other zemindaries at lower rates.

7. Hence it is not the fact that the immediate effect of the permanent settlement was the destruction of most of the great zemindary families in consequence of an alleged crushing assessment under that settlement. Accordingly,

APP. XVIII. the Select Committee of 1812 made too sweeping a remark when they wrote in their Fifth Report as follows:—

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Para. 7, contd.

"The Committee conceive it has now been shown that the great transfer of landed property by public sale, and the dispossession of zemindars, which were observed to take place in an extreme degree during several years after the conclusion of the permanent settlement of the land revenues, cannot be altogether ascribed to the profligacy, extravagance, and mismanagement of the landholders, but have to a certain extent followed as the unavoidable consequences of defects in the public regulations, combined with inequalities in the assessment, *and with the difficulties, obstructions, and delays with which the many nice distinctions and complex provisions of the new code of regulations were brought into operation among the very numerous, but for the greater part illiterate inhabitants of the Company's provinces, who were required to observe them.*"

Sales of estates for arrears of revenue in 1797 and 1798.

8. In this passage the Select Committee overlooked the most fruitful cause of sales of estates from real inability to pay the revenue, which is mentioned in section II (c) of the preceding paragraph, *viz.*, oppression of the ryots. And in the passage in italics the Committee overlooked the consideration of how little the law could restrain zemindars from recovering rent from ryots by seizing their crops, in days when the police were the creatures of the zemindars, and had not the will, even if they had the power, to curb their lawlessness. Respecting the condition of the police, or the state of lawlessness in the principal districts in which sales of land for arrears of revenue occurred, the following information is given in the Appendix to the Fifth Report, *viz.* :—

I.—MIDNAPORE (JUDGE AND MAGISTRATE, MR. H. STRACHEY, 30th January 1802).

(a). I presume to say that those who are not aware of the enormous evil of dacoity throughout Bengal, are those only who have not happened to enquire deeply into, and meditate on, the subject. It is literally true that the lives and property of the ryots are insecure, and, according to the common expression among the natives, that they do not sleep in tranquillity. In Midnapore the foudary business is, comparatively speaking, not very heavy. The convicts are very few, and the calendar seldom, I believe, contains so many trials, or crimes of such enormity, as those of the other districts in this division. Yet are these remarks regarding decoits, in my opinion, applicable to Midnapore, though less so than to other parts of the country of which I have happened to acquire some information.

(b). Dacoits do not now often assemble in large bodies and set the Magistrate at defiance. They lie concealed, come about the court, intrigue with the lower officers or with the jailor, ascertain the probability of detection, conviction, and punishment, what sort of evidence may be requisite to disprove facts, and so on. In short, the country is infested with robbers and villains who know how to elude the law.

II.—CALCUTTA COURT OF CIRCUIT, 2ND SESSION, 1802 (Mr. H. Strachey).

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(a). The crime of dacoity, or robbery in gangs, consisting of from ten or fifty, sometimes above a hundred, prevails throughout this division, and I imagine throughout Bengal, to an enormous extent. The crime has, I believe, increased greatly since the British administration of justice, and I know not that it has yet diminished. * * *

SALES OF
ESTATES NOT
BROUGHT ABOUT
BY PASSIVE
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RYOTS.

Para. 8, contd.

(b). It must not be supposed that dacoity prevails in the district of Midnapore to a greater extent than in other districts of this division; on the contrary, I think there is less, except perhaps in Beerbhoom. In Burdwan there is certainly three or four times as much. The Midnapore reports I mention only because they were made under my own eye, and I am satisfied of their accuracy. Moreover, they agree with my own observation at Jessore and other places. * * * The Nizamut Adawlut know very well the nature of dacoity, and must be aware of the misery of the individuals whose persons and property are attacked by them. This the Court know, since the worst cases are submitted to their revision. But I am not sure that they have an adequate idea of the extent to which dacoity prevails. * *

III.—RAJSHAHYE DIVISION (Mr. E. Strachey)—13th June 1808.

(a). The principal persons who have lands or farms in the northern parts of this district, where there are most dacoits, are the fouzday serishtadar Unoopender Narain, and the peshkar Ruheemoodeen, Kishen Sundial, a dewany mohurir, and Domun Geer Goseya and Anoop Moonshee, who hold no offices under Government.

(b). There is evidently a connection of interests between Domun Geer Goseya and the two fouzday officers, who farm lands together and mutually support each other. Anoop Moonshee, again, is connected with Kishen Sundial and with one Radamohun Ghose, a serishtah vakeel, who appears to be a very considerable person here. Most of the police darogahs seem to be under the influence of Ruheemoodeen. Anoop Moonshee and Domun Geer accuse each other of harbouring dacoits; and there is every reason to believe they are both guilty, for a great many notorious dacoits, and harbourers of dacoits, live on their estates, as well on Ruheemoodeen's and Unoopender Narain's and Kishen Sundial's, although it is not easy to apprehend them, or, if they are apprehended, to convict them. The magistrate here has so much to do, *that a great deal of important business is necessarily left to the principal amlah, that is, to the serishtadar, and Ruheemoodeen.*

(c). It rests with them to bring forward whatever appears to be most pressing, and the magistrate always allows them to give their opinions on the cases before him. Now, it appears to me that if matters of consequence are unwarrantably kept back, and if criminals are improperly released, great responsibility should attach to these officers; for it is quite out of the question to suppose that, as far as the magistrate is concerned, these errors proceed from anything but inadvertency. But if there are very serious charges against these men and their dependents, for all sorts of oppression and violence, and for using the power and influence of their official stations to tyrannise

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Para. 8, contd.

nize with impunity, and to suppress complaints and prevent their being brought to decision, I think it must be admitted that they ought not to be allowed to retain their situations. I have lately sent an order to the magistrate to bring to decision, without delay, seven complaints of this nature, all very serious, and most of them bearing the strongest appearance of truth. The complainants had been twice to the Court of Circuit and once to the Nizamut Adawlut, and the magistrate, whenever they came, ordered the cases to be brought forward, yet they were not brought forward. * *

(d). The fouzdayry serishtadar, with his Rs. 60 a month, and the peshkar, with his Rs. 40, have contrived to possess themselves of great landed property in this district; from their connections with zemindars and their official situations, they have acquired a degree of power and influence which they turn to the worst purposes. I am persuaded that they derive a revenue from the dacoits, and give them protection; and that they suppress complaints which are brought against themselves or their dependents.

(e). It seems to be a prevailing opinion that the state of society in Bengal, owing to the reduction of the great families and the division of estates, is now such as to be unable to afford assistance to the police. That this opinion is erroneous, I entertain not the smallest doubt. Consider who are the chief persons of power and influence in the country, and how perfectly they are at the mercy of Government,—how closely within its reach. These persons are the principal native officers of Government and the zemindars and farmers; under their immediate authority are the inferior native officers of Government and their dependants, and the naibs of the zemindars and farmers; under them, again, are the gomashtha and thannadars and different officers belonging to the cutcherry, and the munduls, poramanicks, and pykes of villages. Large estates are managed chiefly by naibs in the mofussil, and the small estates by the proprietors themselves.

(f). Large towns, which are, I believe, very seldom the residence of dacoits, are the only places where there are many independent men. Throughout the rest of the country, the great body of the people are subject to the power and influence of a few individuals; no objection can arise from the vast number of independent talookdars. I know that the dacoits generally do not live on their estates. Indeed, he who carries desolation into the neighbouring lands cannot be expected to hold an undisturbed residence on the estate of a man who is unable to protect him. I should have no concern about the estates of petty talukdars. Dacoits may be there sometimes, but not often; and if they can be rooted out of the great estates, there will soon be an end of them.

(g). The connection of dependence from the zemindars and the officers of Government to the lowest of the people, is as general and as perfect as can be conceived. Government and natural authority is strong throughout; the superior is in the daily exercise of authority over the inferior, by calls on his personal services or his property. If this authority is exercised in moderation and according to usage, we hear nothing of it; when it is excessive, it frequently appears in our courts. When a darogah gives a detailed account of his proceedings to apprehend dacoits, he almost invariably speaks of his demanding assistance from the zemindar; when

he and his amlah go to a village, they immediately apply to the chief officer of the zemindar; when they find it necessary to apologize for the bad state of the police, they blame the zemindar and his officers. I scarcely know an instance of any other reason being assigned. Again, every zemindar has at the thanna a vakeel or a pyke, or some sort of agent. This man generally acts as a *goindah* also; he is often the confidential agent of the zemindar, of the police officers, and of the dacoits. The effects of this soon appear; that is to say, dacoity begins. * *

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—
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REGULATION.
—
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(k.) I think it is impossible to doubt that the dacoits are protected by the zemindars or their dependants, by the police officers and their agents at their thannas, and by the persons who have power and influence at the magistrate's cutcherry. When I speak of protection, I mean to include in the expression every sort of connivance and neglect by which dacoits are enabled to live unmolested and carry on their profession.

9. Thus, lawless zemindars needed not law's help to seize ryots' crops. Law was powerless to restrain them from worse crime than that; and its officers helped them in wrong. Yet it was averred that (such is the majesty of law!) defaulting ryots arrested the zemindar's arm by referring him to the civil courts, and sold their crops before his face. On these slender grounds, Regulation VII of 1799 was passed. The zemindars of that day needed it not, unless to legalise wrong. Wolves pretended that a combination among sheep was overpowering them; and law sharpened their fangs that they might rend the sheep in ease and security; for had not ryots, terror-stricken by harbourers of dacoits, fiercely borne down great zemindary families?

10. The Government was not ignorant, but merely sentimental. In a Revenue letter from Bengal, the Government reported on 23rd September 1798:—

Parl. Papers,
Sept. 1821-22,
Vol. XI, app.
31.

(a). We propose also to adopt measures for enabling the landholders to recover their demands on their tenants with greater facility and expedition than the present rules for distraining for arrears admit. In framing these rules, we shall *of course be careful* not to deprive the cultivators who pay their rents with punctuality of that security against exaction and oppression which they now derive from the existing regulations.

(b). It is by no means, however, our opinion that the arrears due on account of the past year from the zemindars are to be ascribed generally to the insufficiency of their powers to collect their rents; although we think it equitable to combine, with the more summary mode of collecting the public revenue which we have in contemplation to adopt, every facility which can be given to the zemindars in realising their rents consistently with the just rights of their tenants.

And, thus, the Huftum Regulation was passed, under an avowed conviction that it was really not wanted, but that it would look well to give to the zemindar the same power as

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Para. 10, contd.

the Government would assert over him. It was overlooked that the one who did not need the power was wolfish. The result was that the zemindar of a later day turned the new law into an engine of high-handed oppression, in the name of the security of the public revenue.

11. But if law was weak, and legislators were beguiled by sentiment, yet the ancient custom of established pergunnah rates and of the ryot's hereditary right of occupancy was strong; and zemindars, unenlightened by Sir Barnes Peacock, and therefore not dreaming that ryots had become mere tenants-at-will under the permanent settlement, needed huftum and punjum, and all the devices, during sixty years of tyranny, oppression, forgery, deceit, and fraud, to break that right, and to obliterate that pergunnah rate, under sanction of the cold, selfish *principle* (forsooth!) that almost anything might be allowed to be done by the zemindar, if it was alleged to be required for the security of the public revenue.

Status of the
zemindars of
1793.

12. The status of the zemindars of 1793, as they knew it, was different from that subsequently imagined by Sir Barnes Peacock. There was some method in the Regulations of 1793-94 and of 1795 which form the deeds of the permanent settlements of Bengal and Benares respectively. In these rules one regulation (with sometimes a supplement) was devoted to each subject, *viz.* :—

	Bengal.	Benares.
Proclamation to proprietors, and fixing of the Government demand ... }	I of 1793	I & XXVII of 1795
Settlement:—Regulations of the decennial and of Mr. Duncan, respectively, including pottah regulations ... }	VIII of 1793 } IV of 1794 }	II of 1795
Recovery of arrears of revenue {	XIV of 1793 } III of 1794 }	VI of 1795
Limitation of term of lease ...	XLIV of 1793	L of 1795
Formation and continuance of quinquennial registers ... }	XLVIII 1793	XIX of 1795

13. In logical order, the regulations should have begun by defining the proprietors of land. The definition was supplied for Bengal and Benares, respectively, in the following Regulations :—

I.—BENGAL (*Regulation III of 1794, section 2*).

Every proprietor of land (which term, whenever it occurs in any regulation, is to be considered to include zemindars, independent talukdars,

and all actual proprietors of land who pay the revenue assessed upon their estates immediately to Government, &c., &c.

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II.—BENARES (*Regulation XXVII of 1795, section 10*).

For the sake of precision, it is hereby declared that, wherever the term proprietor or actual proprietor of any taluk, zemindary, village, or other land paying revenue to Government is, or may be, used in this or any other regulation extending to the province of Benares, and printed and published in the manner prescribed in Regulation LXI, 1793, such term is to be considered as applying to the person or persons holding under each separate lease or pottah from Government (*whether he or they possess the entire proprietary right in such lands, or shall only be principal among other pattidars, distinct or common*), whose name or names standing inserted in such pottahs, and who, having executed the counter-part kabuliuts, has or have thereby become immediately responsible to Government, as well for the payment of the revenue, as for the performance of the other stipulations and conditions contained in the quartennial and decennial deeds of settlement; without, however, affecting or prejudicing the rights, distinct or common, of any pattidars or sharers, where any such shall exist, and which, in case of dispute with the pottadars or holders of the pottahs, are to be determined by the Courts of Adawlat according to what shall be ascertained to be the respective rights of the parties agreeably to the principles of justice, and the laws, customs, and usages of the district, as referred to in (Settlement) Regulation II, 1795, as far as regards the parties in question.

14. Here we note—

I. The policy of Government changes; but, however changeable, it never was so fleeting and immoral as that “the principles of justice, and adherence to the laws, customs, and usages of the district,” which were accepted in 1795 as dominating over the legislation of that year in regard to existent rights of property, could have been repudiated by the Government, which dealt with the same subject two years previously in a spirit of milk-and-watery benevolence. The legislators of 1793 did not intend, and they had not the power, to destroy the rights of millions of cultivating proprietors which depended on custom. The intention to uphold those rights was expressed in the reference to the civil courts of all matters affecting them.

II. Down to the time of the decennial settlement, the only way in which rights could grow up was through custom, the ever-surviving law of the East. The Mahomedan rulers did not interfere with this custom—the only occasions which brought them into contact with rights in landed property created by custom were those of collecting revenue from

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1793.

Para. 14, contd.

their subjects, and on these occasions they collected according to established custom; and they collected through comparatively few officials, whom they set over provinces, districts, zemindaries, without expropriating the actual proprietors, whose title was derived from a custom more ancient than law. It were absurd, therefore, to suppose that at the date of the settlement there were no proprietors of land throughout the vast provinces of Bengal, Behar, and Orissa, other than those who paid revenue direct to Government, under arrangements handed over by a native rule, which had always collected through officers, who were necessarily very much fewer by far than the millions whose rights, as cultivating proprietors in a country wonderfully tenacious of custom, were patent throughout the land as the custom and tradition of centuries. When, therefore, the Government of 1789 and 1793 declared that only those who paid revenue to Government were the actual proprietors of the land, the declaration was, on the face of it, a mere legal fiction.

III. The fiction was adopted for convenience of collecting the land revenue, and for enabling a hereditary succession to zemindaries (see Appendix XVIII, para. 14); and the Government was careful to declare that they were creating a fiction, for they averred that the proprietorship of the land was being *vested* for the *first time* (compare with Appendix XVI, para. 37) in the ostensible payers of revenue, who were the only persons recorded in the Government books as proprietors; and, on 27th March 1795, it was explicitly stated that the fiction was not to prejudice any real proprietor, who paid revenue to Government through the ostensible payers of that revenue to the collector. It was also stated, in section 16, Regulation II of 1795, that "the new pottahs were meant only to fix the rental" (*i. e.*, the pottah was a mere record of the rent payable by the ryot, Appendix XVI, para. 3, sec. III, and para. 9, sec. III), "and in no wise to constitute a bar to the recovery of any proprietary right in land, for which suits might be instituted in the Mulki Adawlat in the same manner as if no such pottahs had been granted."

IV. The real proprietors are those described in the passage in italics in extract II in para. 13. They were the various members of village communities. The corresponding classes in Bengal were the dependent talukdars and resident cultivators of villages, or members of the disintegrated village communities in Bengal. These were

protected from disturbance in their possessions, and from increase of their rent above the ancient established pergunnah rate. Protected in these the substance of their proprietary rights, they were in appearance not affected by the legal fiction of treating as proprietors only the payers of revenue to Government. The proprietary rights of the cultivators in Bengal as set forth in other appendices, were identical with those of members of the village communities in Benares and the North-Western Provinces; the only real difference was in the good fortune of the members of the village communities, whose individual rights were recorded by Government officers, while the permanent settlement relegated the corresponding class in Bengal to zemindars, who were to supply the record of right in the form of pottahs, which they were required to grant to the ryots.

APP.
XVIII.

DEPENDENT
TALUKDARS.

Para. 15.

15. The dependent talukdars in Bengal and Behar were thus described by Sir John Shore and Lord Cornwallis:—

Dependent
talukdars.

I.—SIR JOHN SHORE (*Minute, 2nd April 1788*).

(1). The word '*talukdar*' means the holder or possessor of a dependency. The tenures held by persons of this description are dispersed over the whole country, and are too various to be minutely ascertained. The principal distinction in the rights of talukdars arises from the privilege which they may possess of paying their rents immediately at the khalsa, or exchequer, instead of to the zemindars, from whose authority they are wholly exempt, being immediately subordinate to that of the Government. Talukdars of this description differ but little from zemindars, except in the limited extent of territorial jurisdiction. They are all equally bound in the performance of the same services and the payment of rents. *Lately, they have, with them, been made subject to an enhancement of their rents; but this I understand to be contrary to more regular practice and usage.*

Extracts from
Harington's
Analysis of
Regulations,
page 27.

The passage in italics shows that the demand upon talukdars, like that upon ryots, was for an amount fixed according to established custom, and was not liable to increase during the periodical revisions, when, without disturbing the customary rate for ryots, zemindars were taxed for waste land reclaimed since the last revision. As the talukdars and ryots really held direct from Government, their proprietary rights were identical.

(2). These taluks, in general, appear to have been originally portions of zemindaries sold or given by the zemindars, and to have been separated from their jurisdiction, either with their consent or by the interest of the talukdars with the governing power. Some may perhaps have been conferred by the special authority of the dewan or aazim, in default of legal heirs, or in consequence of the dismissal of

APP.
XVIII.DEPENDENT
TALUKDARS.Para. 15, *contd.*

the former talukdars for delinquency. When the separations took place, the rents of the taluks were regulated by the standard of the *tumar*, with an accumulation of subsequent imposts and charges; and this is a reason assigned for the former established practice of limiting the talukdary rents to a fixed sum, not admitting of any increase.

(3). The talukdars, whose lands have not been separated from the zemindary of which they are portions, pay their rents to the zemindars by various rules—some at a fixed rate, consisting of the *tumar jumma*, and an addition for expenses; others are assessed according to the variable demands of the Government upon the zemindar, and pay their proportion of all the charges for which he is answerable. In Behar, the talukdars pay according to the produce of their lands, and enjoy the same allowance which the zemindars themselves possess, of 10 per cent. *malikana*.

(4). Taluks of the description in (3) have chiefly been acquired by purchase, gift, or on condition of cultivating waste or forest lands, and far exceed the proportion of those separated from the zemindary jurisdiction. Some talukdars are little better than ryots, with a right of perpetual occupancy, whilst they discharge their rents agreeably to the terms of their pottahs or leases. It is generally understood, as an universal rule, that taluks ought not to be separated from a zemindary, unless the zemindars should be guilty of oppression or extortion upon the talukdars. The latter are as anxious to obtain the immunity, as the former are strenuous in opposing it; for, exclusive of the diminution of their jurisdiction, they would by this separation lose, what perhaps they have no right to exact, a *rusoom*, or fee, which they generally levy over and above the established rents of the taluks. This, when talukdars are in other respects treated with lenity and justice, is acquiesced in without demur.

(5). All talukdars, unless restricted by the terms of the grants under which they hold, have a right to dispose of their lands by sale, gift, or otherwise, still subject to the same dues to which they themselves were liable; and, indeed, this practice prevails in opposition to the conditions of their pottahs. A zemindar has no power to resume or dispose of the lands of a talukdar.

II.—SIR JOHN SHORE (18th September 1789—*first Minute*).

Fifth Report.

There is an apparent analogy between the talukdars in Bengal, situated within the jurisdiction of a principal zemindar, and that of the proprietors of the soil of Behar, in a similar predicament; but in their reciprocal rights, I understand, there exists a material difference. The muskuri talukdars of Bengal are dependent upon the zemindar, and have no right to be separated from him, except by special agreement, or in the case of oppression, or when their taluks existed previously to the zemindary; neither do they possess the right of *malikana* (para. 5).

III.—LORD CORNWALLIS (3rd February 1790).

(a). With respect to the talukdars, I could have wished that they had been separated entirely from the authority of the zemindars, and that they had been allowed to remit the public revenue assessed upon

their lands immediately to the officer of Government, instead of paying it through the zemindar to whose jurisdiction they are subjected. The last clause in the 16th article of Mr. Shore's propositions, which directs that the lands of the talukdars shall be separated from the authority of the zemindars, and their rents be paid immediately to Government, in the event of the zemindars being convicted of demanding more from them than they ought to pay, will afford them some security from oppression.

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—
Para. 16, contd.

(b). When the demand of Government upon the zemindars is fixed, they can have no plea for levying an increase upon the talukdars; for I conceive the talukdars in general to have the same property in the soil as the zemindars, and that the former are to be considered as proprietors of lesser portions of land, paying their revenue to Government through the medium of a larger proprietor, instead of remitting them immediately to the public treasury.

(c). The pernicious consequences which must result from affording to one individual an opportunity of raising the public revenue, assessed upon the lands of another, at his own discretion and for his own advantage, are evident; and, on this account, I was desirous that all proprietors of land, whether zemindars, talukdars, or chowdries, should pay their rents immediately to the European collector of the district, or other officer of Government, and be subject to the same general laws.

(d). In support of this opinion, I have annexed some extracts from the proceedings of the Committee of Circuit, the members of which must have been well acquainted with the customs and practices of the Mogul Government. These extracts afford convincing proofs of the proprietary rights of the inferior zemindary and talukdars; and that their being made to pay their revenue through the superior zemindar of the district was solely for the convenience of the Government, which found it less difficult to collect the rents from one principal zemindar, than from a number of petty proprietors. They further prove that the zemindars who sold their lands to raise money for the liquidation of the public balances, disposed of all the rights which they possessed in them as individuals; and that whatever authority they might exercise over them after the sale, must have been virtually delegated to them by the Government, and not derived from themselves.

IV.—COMMITTEE OF CIRCUIT, MR. H. MIDDLETON (11th July 1772).

From time immemorial it has been customary for the zemindars, on falling in arrears in the payment of their rents, to raise a sum of money for that purpose by disposing of a part of their lands, either voluntarily or by compulsion of the Government. These lands sometimes are entirely alienated, and become dependent only on the khalsa, or they are annexed to the domains of another landholder, who purchases them; or they are allowed to continue muskuri, that is, under the jurisdiction of their former zemindar, paying only the tuksimi revenue, with the rate of taxes imposed on the rest of the province.

V.—COMMITTEE OF CIRCUIT (20th July 1772).

Resolved also, that the muskuri taluks of Rajshahye be settled upon the same plan, and that, when settled, they do continue to pay

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TALUKDARS.

Para. 15, contd.

their rents as formerly, through the channel of the head farmer of the hunda in which they are included, but without his possessing any other claim upon them or their lands except that of receiving the rents.

VI.—REGULATION XLIV OF 1793.

Section VII.—The revenue payable by such dependent talukdars as were exempted from any increase of assessment at the forming of the decennial settlement, in virtue of the prohibition contained in clause I, section 51, Regulation VIII, 1793, is declared fixed for ever, and their lands are accordingly to be rated at such fixed assessment in all divisions of the estate in which their taluks are included.

These extracts establish that dependent talukdars were proprietors in their own right, independently of their zemindars.

16. Turning, now, to the series of regulations enumerated in paragraph 12, it appears that—

I. The first in order of dates were the Regulations of the decennial settlement, VIII of 1793, supplemented by IV of 1794. The persons having an interest in the land mentioned in this regulation are—

- (a). “Actual proprietors” (definition in paragraph 14, sections II and III), of whatever denomination, whether zemindars, talukdars, or chowdries; also farmers, in temporary substitution for displaced zemindars.
- (b). Dependent talukdars.
- (c). Under-farmers, and such talukdars as are mere lease-holders only, through their holding under instruments which do not expressly¹ transfer the property in the soil, but only entitle the talukdar to possession so long as he continues to discharge the rent, or perform the conditions stipulated therein.
- (d). Khoodkasht ryots, or those holding under rule or custom.
- (e). Ryots under temporary leases made previous to the conclusion of the permanent settlement.

II. Class (c) in the preceding detail held from the zemindar; the writings under which men of that class held are called leases in the regulation. The zemindar was empowered to let, that is on lease, to under-farmers or others above the ryots, all his zemindary, if he liked, except the part forming a dependent taluk. Class (e) also held under leases, but on

¹ This clearly implies that class (b) were real proprietors.

expiration of the lease, the ryots were entitled to demand renewal at the customary pergunnah rates.

III. Classes (b) and (d) held independently of the zemindar, and were treated in the regulations as holding independently. The term "engagement" is uniformly applied throughout the regulation to agreements for the Government revenue, whether of the Government with the zemindar, or by the dependent talukdar, with him, or by the ryot. That is, the engagements by the dependent talukdar and the ryot were really with the Government, the same as the zemindar's engagement. This distinction between "engagement" and "lease" is preserved in the regulation—the former in favour of the two classes (b) and (d), which held independently of the zemindar, whilst the latter was applied to those classes (c and e) who held from the zemindar.

IV. The writing which defined the right of the resident ryot is in the regulation termed pottah, which term was also employed in the corresponding regulation of 1795 to denote the instrument under which the dependent talukdar held in the permanently settled province of Benares; also in Regulation VIII of 1793, section XIX, dependent talukdars are referred to as "pottah talukdars."

V. In the Glossary appended to the Fifth Report, the pottah is described as "a lease granted to the cultivator on the part of Government, either written on paper, or engraved with a style on the leaf of the fan palmyra tree, by Europeans called *cadjan*." In this connection it is interesting to note that in Wilson's Glossary "PAITHA," corruptly, "*pytha*," is described as "a district revenue account, in which the several fields of the villages, whether paying revenue or exempt, are specified under the names of their respective occupants, according to their extent, quality, and produce." The "*pytha*" was a Government account of the ryot's holding; the "pottah" was the document given on the part of Government, showing the amount payable by the ryot.

VI. Thus Regulation VIII of 1793 clearly distinguished three classes, *viz.*,—*1st*, those (proprietors by a legal fiction) who paid to Government the revenue due from the real proprietors of lands; *2nd*, the real proprietors; *3rd*, temporary interests, whether of farmers or pykasht ryots, derived from the zemindar under lease.

VII. In the proclamation of a permanent settlement, the Government was concerned with the first two classes, and mainly with the first; accordingly, the proclamation of

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CLASSES HOLD-
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ENTLY OF
ZEMINDARS.

Para. 16, contd.

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CLASSES HOLD-
ING INDEPEND-
ENTLY OF
ZEMINDARS.

Para. 16, contd.

22nd March 1793 (Regulation I) was addressed to "zemindars, independent talukdars, and other actual proprietors of land," i.e., to those constituted trustees of the real proprietors; while the real proprietors implicated in the trust were also mentioned as "dependent talukdars and ryots:" the third class was not noticed.

17. In this three-fold division of zemindars (or proprietors in the Government's share), real proprietors (*viz.*, dependent talukdars and ryots), and lease-holders (or, practically, tenants-at-will), the resident cultivators were carefully distinguished from tenants-at-will, and were not merged in the latter class, as held by Sir Barnes Peacock. This distinction was also carefully observed in other regulations, which may be noticed as follows; though their introduction in this place slightly anticipates an account of the progress of legislation respecting the rent payable by ryots.

I.—REGULATION VIII, 1793.

(a). *Section LI* secures the estate or land of a dependent talukdar in a zemindary from increase of rent.

(b). *Section LII*.—The zemindar or other actual proprietor of land is to let the remaining lands of his zemindary or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers¹ shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount.

The persons mentioned in this section are zemindars and under-farmers. The *letting* by the zemindar referred, therefore, to leases to the under-farmers; and, accordingly, this section did not empower the zemindar to levy any rent he liked from the ryots. Yet, such discretionary power in dictating the ryot's rent was inferred from this section by Mr. Justice Phear in his judgment on the great rent case; though the intent of the section was to guard against the tendency to oppression of the ryot which is inherent in the farming of rents, and though Regulation VIII of 1793 explicitly restrains the zemindar from taking more than the customary pergunnah rate from any class of ryots. The only reference to the ryot, in section LII, is in the injunction that the under-farmer should, in the ryot's engagement with him, enter the specific amount of rent payable by the latter.

¹ i. e., the ryot's engagement with the under-farmer.

What that amount should be, was determined in other sections of the regulation, which fixed the customary pergunnah rate as a maximum.

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LEASES DISTINGUISHED FROM
POTTAKS.

Para. 19.

II.—REGULATION XLIV OF 1793.

(a). *Section II.*—No zemindar, &c., shall dispose of a dependent taluk to be held at the same or any other jumma, or fix at any amount the jumma of an existing dependent¹ taluk, for a term exceeding ten years, nor let² any lands in farm, nor grant *pottahs*³ to ryots or other persons for the cultivation of lands, for a term exceeding ten years; * * nor renew any such engagement, lease, or pottah at any period before the expiration of it, excepting in the last year, &c.; * * and every engagement fixing the jumma of a dependent talukdar, and every lease or pottah which has been or may be concluded or granted in opposition to such prohibition, is declared null and void.

(b). *Section III.*—But the sharers shall not demand from the dependent talukdars, under-farmers, or ryots, in their respective shares any sum beyond the amount specified in the engagement, lease, or pottah, which may have been entered into between them and the proprietors, &c., &c.

(c). *Section IV.*—The person or persons to whom the lands shall be so transferred, or may devolve, shall not demand from the dependent talukdars, under-farmers, or ryots in the lands transferred any sum beyond payment of the amount specified in the lease, pottah, or other engagement for the rent or revenue, which may have been entered into between them and the former proprietors, &c.

II.—REGULATION L, 1795.

Sections III and IV.—Rules for Benares, the same as those set forth for Bengal in I (a), (b), (c).

18. In these regulations, the “engagements” spoken of were those with dependent talukdars; “leases” were those with farmers and under-farmers; and “pottahs” were those granted to ryots.

19. In the supplemental regulations which followed, the term “leases” was necessarily used in the same restricted sense as in the preceding regulations. The leases mentioned in Regulation IV of 1793, section 2, were those to under-farmers. Regulation V of 1812 rescinded the portion of that second section relating to leases only, and declared “proprietors of lands competent to grant leases for any period which they may deem most convenient to themselves and tenants, and most conducive to the improvement of their estates.” The leases here spoken of included those of the patnidars and dur-patnidars, more specifically mentioned afterwards in Regulation VIII of 1819; and the latitude given to zemindars had regard only to the period of such leases—not to the

¹ Engagement.

² Lease.

³ Pottah.

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LEASES DISTIN-
GUISHED FROM
POTTANS.

Para. 19, contd.

amount of rent. Hence, in September following, Regulation XVIII of 1812 was passed, (a) to remove doubts which had arisen in the construction of section II, Regulation V of 1812, and (b) to rescind sections 3 and 4 of Regulation XLIV of 1793, and sections III and IV of Regulation I of 1795. The parts of Regulations of 1793 and 1795 rescinded were those only which related to leases of under-farmers; and the part of Regulation V of 1812 interpreted in this Regulation, XVIII, also referred only to the same leases. Accordingly, when Regulation XVIII of 1812, in explaining section 2, Regulation V of 1812, declared that proprietors of land were "competent to grant leases for any period, even to perpetuity, and at any rent which they might deem conducive to their interests," the power (whatever that might be) conferred thereby on zemindars was simply that of settling the period and amount of lease with any tenant desirous of holding between the zemindar and ryot. The status and rent of the ryot were unaffected by that regulation. There was reason for the distinction; the lease to a middleman was for an area of ground, including waste land, in respect of which the increased income from reclaiming waste would be a matter of bargain between zemindar and middleman, whilst there was no room for discretion or bargain as to the highest rent from a ryot, that being limited by custom to the established pergunnah rate as a maximum.

20. Under the several regulations of 1793, which, together, form the deed of the permanent settlement, zemindars were restrained from levying more than the established customary rate from any ryot. For perpetuating that rate, the faith of Government was as solemnly pledged to the ryot as, by other parts of the deed, it was pledged to the zemindar. The Government was not competent to recede from this pledge, any more than it could break its engagement with the zemindar. Accordingly, it was not open to the Government, by subsequent subsidiary or supplemental regulations, to empower zemindars to levy any rent higher than the established pergunnah rate of 1793.

21. Nor do we find that the least deviation was countenanced in any regulation supplemental to those of 1793, which form the deed of settlement. Rent, according to the established rate or usage of the pergunnah, for lands of the same quality and description, was prescribed (Regulation IV of 1794) as that payable by all ryots who were entitled to demand pottans, either in the first instance, in 1793, or on renewal,

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OF 1812 WRONG-
LY INTERPRETED
TO RYOTS'S PRE-
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Para. 23.

later, of pottahs which had to be limited in the first instance to ten years, under Regulation XLIV of 1793, or which under that regulation stood cancelled on the sale of an estate for arrears of revenue. It was also prescribed as the rate leviable (in the absence of any engagement) from ryots on any attached estate which the Revenue Department might take charge of, on default for revenue, or under a decree of court (*Regulation XIV of 1793, section 6, and XLV of 1793, section 7*).

22. It has been erroneously held that a different form of expression was adopted nineteen years later, when Regulation XVIII of 1812 empowered zemindars to grant leases for any period "and at any rent which they might deem conducive to their interests;" but this was the identical form of expression which in Regulation VIII of 1819, section III, clause *second*, was employed to describe the rent payable by middlemen. This permission manifestly referred to leases to under-farmers only (paras. 18 and 19), and, moreover, the power conferred was that, virtually, of letting at reduced rates; for it was only that power which the rescinded clause of Regulation XLIV of 1793, now revived by Regulation XVIII of 1812, had withdrawn from zemindars. The reduction of the middleman's rent implied the reverse of any necessity for raising the ryot's rent; and the dissimilar, incongruous, contradictory purposes of empowering the zemindar to reduce the middleman's and to raise the ryot's rents were clearly not expressed in a simple declaration of the zemindar's competency to grant leases to farmers at any rent that pleased him.

23. I. It has also been held that Regulation V of 1812 reduced the status of ryots to that of tenants-at-will, by releasing zemindars from the obligation to grant pottahs in a form approved by the collector, and by declaring that—

(a). The proprietors of land shall, henceforward, be considered competent to grant leases to their dependent talukdars, under-farmers, and ryots, and to receive correspondent engagements for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests:

(b). Provided, however, that nothing herein contained shall be construed to sanction or legalise the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *muthote*, or any other denomination. All stipulations or reservations of that nature shall be adjudged by the courts of judicature to be null and void; but the courts shall, notwithstanding, maintain and give effect to the definite clauses of the engagements contracted for between the parties, or, in other

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Para. 23, contd.

words, enforce payment of such sums as may have been specifically agreed upon between them (*Section III*).

II. In the first place, as pointed out by the Court of Directors in 1821 (Appendix X, para. 1, IV*b*) and by Mr. Justice Morgan, in the great rent case, "these Regulations of 1812 were no part or condition of the permanent settlement." Next, a close examination of the extract shows that the hastily accepted interpretation of it is not the correct one. From the first clause of the extract it appears that the traditions of 1793 had become faint, inasmuch as the potahs to ryots were termed leases; but the clause affirmed nothing about the rate of rent. The second clause simply repeated the option allowed by the Regulation of 1793 to zemindar and ryot to agree for a fixed rate, irrespective of the kind of produce (Appendix XVI, para. 17); it did not abrogate the provisions of previous regulations regarding the obligatory established rate, that is, the rate which was imperative failing an optional rate to be determined by mutual agreement. Such optional rate between zemindar and ryot, in a time past when there was plenty of waste land, would perforce be less than the pergunnah rate. Instead of Regulation V of 1812 abrogating the pergunnah rate, other sections of it provided rules for approximating to the established rate in parts of the country where the pergunnah rates had become uncertain;—and, furthermore, the prohibition of *abwabs* and *muthotes*, that is, of cesses or levies in excess of customary rates, implied observance of those rates.

III. The law, in fact, still held to the rule of the established pergunnah rate; but as the zemindars had obliterated the pergunnah rate in some parts of the country, the legislature had to fall back on expedients which still kept any new adjusted rate within amounts known to prevail in adjacent lands, or to have been paid within the past three years on the particular land concerned;—and it had to depend on the further expedient, as in 1793, of leaving the zemindar and the ryot to come to a special agreement, at the option of the ryot, no less than of the zemindar. In all this the principle of enhancement of rent beyond the customary rates was not countenanced; and if there was any deviation from the terms by which the Regulations of 1793 had designed an adherence to the established customary rates, then, as the zemindars' considerable invasion, by 1812, of the rights and property of the ryots had necessitated these differences in expression, they cannot be interpreted

as modifying the permanent status of the ryot under the Regulations of 1793, which were designed as a permanent deed of settlement with the ryot, equally as with the zemindar. Learned judges of the High Court will not interpret the law so as to allow a zemindar to profit by his own wrong, when another interpretation, more natural and more consistent with the permanent rules of the permanent settlement, is open to them.

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PERGUNNAH
RATES CON-
FIRMED BY SALE
LAWS.

Para. 25.

24. After another ten years, Regulation XI of 22nd November 1822 was passed, to correct alleged defects in previous regulations; "inasmuch as they do not * * * define with sufficient precision and accuracy the nature of the interest and title conveyed to the persons purchasing estates so sold for the recovery of arrears of revenue." It was declared that the purchaser was not entitled to—

Pergunnah rates
confirmed by
Sale Laws.

(a). Disturb the possession of any village zemindar, pattidar, mo-fussil talukdar, or other person having an hereditary transferable property in the land, or in the rents thereof, not being one of the proprietors, party to the engagement of settlement, or his representative.

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(b). Eject a khodkasht ryot, kudimi ryot, or resident and hereditary cultivator, having a prescriptive right of occupancy.

(c). Demand a higher rate of rent from an under-tenant of either of the above descriptions than was receivable by the former malguzar, saving and except in cases in which such under-tenants may have held their lands under engagements stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malguzars from the old established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such under-tenants are liable to be called upon for any new assessment or other demand not interdicted by the regulations of Government.

The classes protected in extracts (a) and (b) are those described in paragraph 6, section III, as the real proprietors recognised in the Regulations of 1793, and the enhancement of rent conditionally allowed in extract (c) was merely from a rent lower than the customary rate to such customary rate. Section XXXIII added that nothing in section 9, Regulation V of 1812, was intended "in any respect to annul or diminish the title of the ryots to hold their land subject to the payment of fixed rents, or rents determinable by fixed rules, according to the law and usage of the country."

25. Act XII of 1841, as generally interpreted, made a serious innovation upon the deed of permanent settlement, or the Regulations of 1793; but if the received interpretation be correct, the Act, as it affected ryots, was *ultra vires*, from

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PERMANENT
RATES CON-
FIRMED BY SALE
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Para. 26, contd.

the very fact of its being an innovation, and one, too, introduced more than fifty years after the permanent settlement. The new law was rather long-lived, compared with the short life of a law in these days of incessant change of mind, which means consummate wisdom; but, happily, it came to an end. The objectionable provision in the Act of 1841 (to be presently stated) was reproduced in Act I of 1845; and so it remained in force until the repeal of the latter Act by Act XI of 1859. It had force, however, in respect only of those ryots, on estates actually sold for arrears of revenue from 1841 to 1859, against whom zemindars had, before the passing of Act X of 1859, instituted successful suits for the enhancement of rent under the Act of 1841 or of 1845.

26. Act XII of 1841, section 26, prescribed as follows:—

The purchaser of an estate sold under this Act shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled, after notice given under section X, Regulation V of 1812, to enhance at discretion (anything in the existing regulations to the contrary notwithstanding) the rents of all under-tenures in the estate, and to eject all tenants thereof, with the following exceptions:—

A—TENURES—

- 1st*, which were held *istimrari* and *mokurrari* at a fixed rent, more than twelve years before the permanent settlement;
- 2ndly*, which were existing at the time of the decennial settlement, and which have not been, or may not be, proved to be liable to increase of assessment, on the grounds stated in section LI, Regulation VIII of 1793:

B—LANDS—

- 3rdly*, held by *khoddkasht* or *kudimi* ryots, having rights of occupancy at fixed rents, or at rents assessable by fixed rules under the regulations in force.
- 4thly*, held under *bond fide* leases, at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying-grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases:

C—FARMS—

- 5thly*, granted in good faith at fair rents, and for specified areas, by a former proprietor, for terms not exceeding twenty years, under written leases registered within a month from their date, and with due notice of full particulars to the collector, who has right to object if the security of the public revenue will be materially affected thereby.

The correspondence and minutes of consultation respecting Act XII of 1841 were published in 1853 in a volume of "Papers regarding the consequence to under-tenures of the sale of an estate for arrears of revenue." It appears from that volume that the proposals for change of the Sale Law, as it stood before the passing of that Act, began in 1833. In a minute dated 10th August 1833 on a new Sale Law proposed by the Board of Revenue, Mr. Ross, Member of Council, observed :—

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In regard to the practice mentioned by the Presidency Sudder Board of Revenue, of defaulting zemindars allowing their estates to be brought to sale for arrears of revenue, and purchasing the estates themselves in a fictitious name,—it is resorted to, I believe, only by zemindars who have recently acquired, and consequently possess, a large proprietary interest in their estates. The main object of the practice is to get rid of existing leases, and to obtain an immediate increase of rental by a fraudulent application of the regulation which annuls the leases of zemindars when their estates are sold for arrears of revenue—a regulation the existence of which not only operates perniciously, by inducing the practice adverted to, but opposes a complete bar to agricultural improvement, by depriving leaseholders of all security in the stability of their leases. This regulation, I think, should be immediately rescinded; and all leases granted by zemindars, and other landholders empowered to grant them, held valid, and not liable to be annulled on any pretext whatever, until adjudged to be collusive by a decree of a court of justice passed in a regular suit. The public revenue would be sufficiently protected against the effects of collusive leases, were such leases, like other fraudulent transactions, left to be dealt with by the courts according to their deserts.

27. The revision of the Sale Law was not effected until eight years later; the proposal of it sprang from a desire to prevent frauds by zemindars; but (such was the seeming devil's luck of zemindars) the actual revision conferred on the purchasers of estates sold for arrears of revenue the power of enhancing "at discretion" the rents of all under-tenures, with the exceptions above stated. This was the result; though, during the whole course of the discussion, the point mainly insisted upon was the expediency of encouraging middlemen, with the view of attracting Europeans and their capital for the improvement of agriculture. The status of these middlemen, and the degree of protection to be afforded to them, engrossed the attention of the Commissioners of Revenue, the Board of Revenue, the Local Government, and the Members of Council, who reported or minuted on the proposed changes of law; the rent payable by ryots was but incidentally men-

tioned, but was in no case discussed. The Indigo Planters' Association did indeed represent that—

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Para. 27, contd.

the proposed Act for amending the Bengal Code in regard to sales of land for arrears of revenue will, if enacted, practically inflict grievous hardship on the great body of ryots; will subject the ryot to rack-rent, and place him at the mercy of an arbitrary landlord, armed with the oppressive power of ejectment. For no fault of the ryot, but from the mismanagement or improvidence of one landlord, the innocent agriculturists will be liable to be transferred to another, who by the said section acquires the authority, unpossessed by his predecessor, of demanding an exorbitant rent, on pain of ejectment. The tenure by which the ryot and his predecessors have possessed their humble tenement may thus be rudely broken, and rights which have been deemed prescriptive, and which were sanctioned by regulation, be barbarously invaded.

28. I. In section XXVI of the original Bill, as criticised by the Indigo Planters' Association, the class of ryots exempted from enhancement of rent was described thus: "Lands held by khoddkasht or kudimi ryots having rights of occupancy under the regulations in force." Mr. Prinsep, in his minute on the draft Sale Law, observed: "There is an omission in this clause of the words 'at fixed rent,' or 'at rents assessable according to fixed and known rules.'" Accordingly, these words were added to the Act as passed into law.

II. Apparently, this was a contemptuous rebuff to the Planters' Association for its serious remonstrance; but, really, it was not so, for it is probable that the words "rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the regulations in force," were introduced with the object of meeting the criticism of the Association. Evidently the added words covered, in the estimation of the Government of 1841, the mass of ryots, *viz.*, all but those on the *neef* lands or private estate of the zemindar, and non-resident cultivators whose brief sojourn in villages not their own had not yet matured into an occupancy right. If in providing for a change of Law, which had been proposed and discussed in reference only to the middle tenures between zemindar and ryot, the Government did not intend to protect, —as, until then, the Law had protected,—the great body of ryots from enhancement, they would not have used the circumlocutory phraseology above noticed in describing the classes of ryots who were protected. The expressions "fixed rent" and "rent assessable according to fixed and known rules," do cover the rights of all the resident ryots, old and new, who were protected by the Regulations of 1793. It has been sought, by restricting these expressions to kudimi ryots,

to confine their application to the ancient khoodkashts whose tenures date from years before the decennial settlement; but the phrase *kudimi ryot* does not occur in the Regulation of 1793; it was first adopted in Regulation XI of 1822 in defining those rights of ryots which were protected in 1793; but the use for this purpose, in 1822, of a term which designated a class of ryots who were not so designated in the Regulations of 1793, cannot govern the interpretation of other expressions in the laws of 1793, which, without the doubtful help of *kudimi*, do embrace the great body of resident ryots, old and new, who were protected by the Regulations of 1793. Accordingly, the mass of these resident cultivators, old and new, are included in the exemption from enhancement which section 26 of Act XII of 1841 secured for all ryots whose rent was assessable according to fixed and known rules.

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III. Hence, all resident cultivators were exempted from the power given to zemindars in section 26, Act XII of 1841, to enhance at discretion the rents of under-tenures. By this large exception, the power conferred was practically limited to raising the rents of middlemen; and this was in strict keeping with the principle or theory of the Sale Law (Appendix XXI, para. 29, section III). But judge-made law gave to this section of the Act an extended meaning contradictory of the law of 1793, and beyond the purpose of the legislators, who in changing the Sale Law sought only to relax it for middlemen. Mr. H. T. Raikes, Judge of the Sudder Court, observed on 17th June 1858:—

(a). It is well known that the section (XXVI) I allude to has been held by the Courts of law through numerous precedents to apply to ryots and cultivators, as well as to intermediate tenures, with the exception of those generally exempted in the subsequent clauses. * *

(b). I cannot suppose so important a provision of the Sale Law has been overlooked, and I therefore conjecture that the framer of the Bill (of October 1857, for the recovery of rents) has read the 26th section as applying only to intermediate tenures, and considered that allusion to its provisions would be out of place in a Bill declaratory only of the rights of the *cultivators*; but the Courts of law have given a different construction to this section."

The numerous precedents to which Mr. Raikes referred do not appear in the published decisions and Full Bench rulings of the Sudder Court; probably they were decisions of the lower Courts; at any rate, they can hardly be held to have had the force of law, and the stretching thus of the interpretation of section 26 of Act XII of 1841, so as to subvert a fundamental part of the permanent settlement of

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1793, then fifty years old, and in which the faith of Government was as solemnly pledged to the ryot as to the zemindar, outraged the received rules of judicial interpretation (Appendix XVII, para. 36).

IV. The true reading, then, of section 26 of Act XII of 1841 is that the power of enhancing "at discretion" the rents of under-tenures was restricted to the tenures between the zemindar and the cultivator (in the Regulations of 1793, and for long after, the term tenures was restricted in the regulations to these middle interests, and did not include cultivators). According to this reading, there was no disregard of the binding force of the permanent settlement; whilst, according to the ordinary reading, which excludes the mass of ryots from protection under Act XII of 1841, there was an unwarranted departure from the Government's obligations under that settlement, amounting to a breach of its faith, which was as solemnly pledged to the ryot as to the zemindar in 1793.

V. We have seen that, down to 1822, and therefore until 1841, the established customary rate of the pergunnah was the rule of rent for all ryots, except those who could prove their title to a lower rate, in accordance with conditions specified in the Regulation of 1793. But this phrase could not be adopted in the Act of 1841 for limiting the ryot's rent, because, in various parts of the country, the zemindars had obliterated the pergunnah rate. For these cases Regulation V of 1812 had provided rules for determining an approximation to the pergunnah rates; and these rules remained in force until Act X of 1859. Hence, in passing Act XII of 1841, the legislature had recourse to the circumlocutory form of words "fixed rents, or rents assessable according to fixed rules under the regulations in force," for expressing the maximum rent leviable from the great body of ryots described in the preceding paragraph.

VI. Thus, if we understand the third clause of section 26 of Act XII of 1841 to cover, in regard to occupancy rights, the great body of ryots described in para. 16, section I, and para. 24, and to denote the customary pergunnah rates as the maximum rate leviable from ryots, we are able to acquit the zemindars of devil's luck, to exculpate the legislature from a flagrant breach of the faith solemnly pledged to the ryots in 1793, and to rescue the legislators of 1833 to 1841 from the absurdity of having sought a change of the Sale Law for the purpose of circumventing zemindars' fraud, only to revise it with the result of helping zemindars' rapacity.

VII. In short, rightly interpreted, Act XII of 1841 carried out the original purpose, in 1833, of a change in the Sale Law, through clause 5 of its section VI, while in clause 3 of that section it maintained the established *pergunnah* rate as the maximum rate of rent for all ryots, except the tenants-at-will on the private estates of zemindars, and the comparatively few non-resident cultivators whose sojourn in other villages than their own had not matured into an occupancy right. All but this small minority of excepted classes of ryots were, with all privileged dependent talukdars, protected by it from enhancement and from ejectment, if they paid the rates demandable from them within the maximum of the *pergunnah* rate; and, in addition, it protected underfarmers, who held under registered leases for a period not exceeding twenty years.

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29. Putting aside this slight addition or exception, the Sale Law of 1841 continued intact the Sale Law of 1793. Under these laws, alike, we find that—

I. Dependent talukdars, whose title to their property was independent of the zemindar, and whose property was affiliated to his zemindary solely for the more convenient collection of the Government revenue, were protected from enhancement or disturbance of any kind, on sale of the zemindary for arrears of revenue. The Government revenue on the dependent taluk was a fixed amount for a definite area of taluk; and as that fixed amount (neither more nor less) had been included, in respect of that particular area of taluk, in the zemindar's engagement with the Government for what he had to pay to Government under the permanent zemindary settlement, perforce that amount was protected from alteration, by way of revision or enhancement, alike on divisions of the zemindary or on its sale for arrears of revenue.

II. The same principle was adopted for the ryot. In the permanent settlement, the zemindar and ryot were to agree as to what amount should be entered in the ryot's *pottah* as covering the amount demandable from the ryot within the maximum of the ancient established *pergunnah* rate, plus State *abwabs*; for the sum of only these two had provided the average collections of previous years, which determined the amount demandable from the zemindar under his engagement with the Government in the permanent settlement. Accordingly, the customary *pergunnah* rate became the limit to which the ryot's rent could be enhanced on sale of a zemindary for arrears of revenue.

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III. Whatever may be the worth of the modern theory respecting "unearned increment," it is obvious that the theory of the Sale Law from 1793 to 1841 went no farther than this, namely, that, to enable the auction-purchaser to pay the amount of Government revenue which was fixed on the zemindary in 1793, he should be empowered to recover from privileged dependent talukdars the amount of revenue which they paid in 1793, and from ryots the ancient established pergunnah rates. The receipts thus assumed, and the rents from resumed lands and from waste lands reclaimed since 1793, afforded ample means for paying the Government revenue; and, therefore, no ground for enhancement to a greater extent than this was provided by the Sale Laws down to 1841 and 1845, which professed to do no more than to place the auction-purchaser in the position occupied in 1793 by the original engager with Government.

IV. But while the Sale Laws from 1793 to 1858 furnish no grounds for enhancement beyond the ancient established pergunnah rate of 1793, we may seek in vain for any other regulation or law in or since 1793 to 1858 empowering the zemindar, on any other occasion or pretence whatever, to enhance the ryot's rent beyond the pergunnah rate of 1793, which the regulations of that year directed should be inserted in the pottah, with a specific statement of the consequent amount of rent, as the only amount recoverable thereafter from the ryot, while the regulations, advisedly, did not provide for any after-revision of that amount.

V. The title of the privileged dependent talukdars to their property was independent of the zemindar. Of holders between the zemindar and ryot, who derived from leases given by zemindars, none (with the exception stated in the beginning of this paragraph) were protected under the Sale Laws of 1793 and of 1841, for the obvious reason that, if any such middleman had obtained low rates from the defaulting zemindar, that is, low rates out of which, as paid to the zemindar, he had to pay the Government revenue, what remained to the middleman was an undue portion of the amount paid by the ryot; undue, that is, as containing not only the costs of collection and a fair remuneration for the middleman, but a portion of the zemindar's profit or of the Government's rent. The expediency of a power to the purchasing zemindar of enhancing the middleman's rent was obvious; and the degree or extent of enhancement was necessarily "at the discretion" of the purchasing zemindar. No

other limitation was needed, beyond any which might limit the enhancement of the ryot's rent ; for the amount payable by the middleman, or farmer of rent, could only come out of the amount demandable from the ryot.

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VI. As to the ryot, section V of Regulation XLV of 1793 restrained the purchasing zemindar from acquiring from any class of ryots whatever anything more than "what the former proprietor would have been entitled to demand according to the established usage and rates of the pergunnah or district in which such lands may be situated, had the engagements so cancelled never existed." This was in accordance with the theory on which the demand against the ryot was limited in the Sale Laws from 1793 to 1858 (sections III and IV of this paragraph).

30. We may now apply these conclusions to the growth of occupancy right. From 1793 to 1858, the law and rule were that from no class of ryots could the zemindar (whether an auction purchaser or other zemindar) recover more than the ancient established rate of the pergunnah,—that is, more than the ancient established rate proper for the *land* occupied by the ryot. The regulations of the permanent settlement of 1793 had established, as a maximum rate, a permanent pergunnah rate of rent for the land included then or thereafter, in each ryot's holding ; and they allowed favourable rates as an exception to this permanent rate in favour only of particular classes of ryots, on their proving title to the favour in the manner prescribed in those regulations of 1793. Any ryots not fulfilling the conditions required for those favoured rates were subject to enhancement to the pergunnah rate. Hence, 1stly, the custom under which occupancy right accrued from possession, subject to payment of the established pergunnah rate, was not interrupted by the Sale Laws, any more than by any other law, in the case of those who paid not less than the pergunnah rate of 1793. And 2ndly, if a zemindar neglected to enhance to the pergunnah rate the rent of a ryot who was not entitled to a lesser or favoured rate under the Regulations of 1793, such ryot could acquire a title to exemption from enhancement, under any statute of limitation, except where such title by prescription might be overruled by the Sale Law. The Sale Laws down to that of 1841 did overrule such title as against the purchaser of an estate sold for arrears of revenue. But the Acts XII of 1841 and I of 1845 established, in this regard, an important

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change. The first of these Acts rescinded all previous Sale Laws, without reserving rights of enhancement possessed by auction-purchasers under those laws, but not put into force at the date of their repeal. Thus—

ACT XII OF 1841.—

Para. 30, contd.

It is hereby enacted that section 2, Regulation IV, 1793 ; Section 2, Regulation III, 1794 ; Regulation XI, 1822, except sections 36 and 38 ; and Regulation VII, 1830, are rescinded except in so far as they rescind other regulations or parts of regulations.

And the powers for enhancing rent which the Act conferred were restricted to purchasers “of estates sold under this Act for the recovery of arrears of revenue, &c.” In turn, Act I of 1845 repealed Act XII of 1841 without reserving the dormant¹ rights of enhancement of purchasers at sales under the Act of 1841.

31. The effect of this omission, to reserve dormant rights of auction-purchasers under previous Sale Laws, is stated in two decisions of the Privy Council,—in the cases of *Ranee Surnomoyec vs. Maharajah Sutteeschunder Roy* (Weekly Reporter, Privy Council, vol. 2, p. 14) and *Rajah Suttosurum Ghosal vs. Mohesh Chunder Mitter* (Weekly Reporter, Privy Council, vol. XI, p. 10). In both cases the suits of the zemindars who derived from auction-purchasers of a former time, were against hereditary dependent talukdars or putneedars. The earlier judgment, dated 23rd July 1864, in the case of *Ranee Surnomoyec*, who opposed the enhancement of her rent by the Maharajah Sutteeschunder Roy, contained the following deliverance:—

I. The reliance of the respondent (the Maharajah) is on some one of the regulations which have been made at different times in regard to purchases at Government auction sales, in the case of zemindaries from which the Government income has been duly paid. These regulations have been couched in different language, but all with the same policy in view as regards the present question.

II. It has been assumed as the foundation of them, that the default of the zemindar may have been occasioned by improvident grants of taluks and other subordinate tenures at inadequate rents ; that this was in breach of the condition on which the fund was originally created by the sovereign power ; and the purchaser, therefore, has been set free from the obligation of these grants, with certain specified exceptions, and with certain limitations of his power as to new tenancies to be created.

¹ It is shown in para. 31, section IV, and para. 32, section Va, that the qualified right of enhancement permitted to an auction-purchaser, if allowed by him to lie dormant beyond a reasonable period, became extinct.

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Para. 31, contd.

III. It would appear from the proceedings of the Court below that it was intended to rest respondent's case on Act I of 1845, which certainly would not have supported it, because the sale relied on was not effected under that Act, and its provisions are limited to sales so effected. Upon the arguments before their Lordships, the counsel for the respondent relied on the fifth section of Regulation XLIV of 1793, which is the earliest of the regulations on this subject, and they contended that, although subsequent regulations have been passed in different language and repealed, this fifth section of Regulation XLIV of 1793 has never been repealed, but was in force at the time when the sale in question was made and this action was commenced.

IV. (a). Whether upon the true construction of all the regulations taken together this particular section ought to be taken to have been repealed or not, their Lordships do not think it necessary to determine. They assume in favour of the respondent that it stands unrepealed and in full force, and will deal with the case upon that footing.

(b). The language of this section is no doubt favourable to the respondent's case. It provides that when a zemindary is sold at a public sale for discharge of arrears due from the proprietors to the Government, all engagements which such proprietors shall have contracted with dependent talukdars whose taluks may be situated in the lands sold, as also all leases to under-farmers, and pottahs to ryots (with the exception of the engagements, pottahs, and leases specified in sections 7 and 8) "shall stand cancelled from the day of sale," &c. * * The respondent contends that by the operation of the words "stand cancelled from the day of sale," the existing interests of the talukdar, *ipso facto*, ceased to exist, without any act done by the purchaser; that it was incapable of confirmation, being set up by him or his successors; and that where, from the acquiescence of the purchaser, or those claiming under him, the possession had remained undisturbed, and the original rent had been received, no matter for how long a period, or through whatever number of mesne conveyances, it still remained a bare possession at the will of the zemindar for the time being, and the rent always liable to enhancement.

(c). In this hard and literal construction of the words cited above, their Lordships do not concur. They think their meaning is properly to be collected from the policy and intent of the regulation, from the language used in other parts of the same section, and from the seventh section which creates an exception out of the provisions of that section. English lawyers are familiar with this principle of construction applied as early as the time of Lord Coke (see Ins. 45) to the disabling Statute of 1st Eliz. c. XIX, s. 5, and in several modern reported cases between landlord and tenant, on clauses or forfeitures in leases; words which make a Bishop's grant "utterly void and of none effect to all intents, constructions, and purposes" have been held not to prevent the grant from being good and binding on the grantor, and in some cases confirmable by the successor; and so a proviso in a lease, that it should be void altogether in case the tenant should neglect to do a certain act, has been held only to make voidable at the option of the landlord. Their Lordships do not cite these as authorities governing this case, but mention them only as illustrating a general principle of construction,

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Para. 31, contd.

which, for its justice, reasonableness, and convenience, must be considered of universal application.

(d). In the present case, the object of the Government was that the jumma should be duly paid, and that the means of paying it should not be withdrawn by the improvident grants of the zemindars who had made default; but cases of default might often arise where no improvident grant had been made, where the talukdars and the ryots held at proper rents, and the default was owing to extravagance, mismanagement, or other causes; in such cases the Government cannot be supposed to have intended a wanton and unjust disturbance of vested interests. It is true that the section makes no distinction in terms between the two classes of cases; but the consideration furnishes reason for such limitation, both as to time and extent of operation, as the words will admit (indeed seem to require) in order to give effect to the whole sentence.

(e). Now, looking at what follows in the same clause, it is obvious that no such absolute cancellation was intended, for the power expressly and affirmatively given to the purchaser supposes the talukdars and the ryots to remain in all respects as before, except that they become liable to a certain limited increase of rent, according to the established usages and rates of the pergunnah or district; words in themselves showing that the section was directed to cases in which grants had been made with reservations of rent below those usages and rates.

(f). It is to be observed, also, that in terms this power is given only to the purchaser himself, which would ordinarily suffice to remedy the mischief in contemplation. The language of the exception, too, in section seven shows that what was aimed at by section five was, not the destruction of tenure, but the increase of rent under certain specified and equitable limitations.

(g). The conclusion at which their Lordships have arrived as to the construction of the section is this: that a power was given by it to the purchaser at a Government sale for arrears to avoid the subsisting engagements as to rent, and to increase the rent to that amount at which, according to the established usages and rates of the pergunnah or district, it would have stood had the cancelled engagement so avoided never existed. This gives it a just and reasonable operation, and virtually it would have had none, when the existing rent was already according to the usages and rate of the pergunnah.

(h). This conclusion is of great importance in the determination of the remaining questions. The sale to Muddoosooden Sundyal (the first auction-purchaser, from whom the respondent derived through three transmissions) according to the respondent's own case, took place some time before 1823, and he found those under whom the appellant claims holding the land at an old rent of Rs. 64-1-6; he did not attempt to disturb the occupation or increase the rent, but received it during all the time he remained owner. He sold by private contract to Mr. Harris, from whom it passed to his widow, Mrs. Harris, and from her again, by private contract, to the respondent's father, Maharajah Greesh Chunder Roy, as has been already stated. During all this time (and for a considerable period before, so far as appears, indeed, from the very creation of the tenure—more than sixty years ago) the same rent has

always been paid; and there is no evidence that when first imposed (nay, even when the purchase was made)—it was not a perfectly adequate rent for the property;—great changes in the value of property have now arisen, and the respondent demands by his plaint an annual rent of Rs. 1,410, or nearly twenty-three times the amount of the original rent, according, as he states it, to the actual rate current in the village.

(i). If the section in question did not authorise the purchaser to disturb the possession, and left him an option to confirm the existing rate of rent, there seems to be the strongest evidence that he exercised that option in favour of the talukdar; and even if the same rights passed from him unimpaired to Mr. Harris, and in succession to those who claim under him, the evidence is equally strong—nay, as regards Mr. Harris personally, it is stronger. It is therefore unnecessary to decide whether the section is to be construed as giving a power only to the purchaser, or to him and his heirs, or a power attached to the zemindary, which passed to subsequent purchasers.

(j). Their Lordships, moreover, observe that the power given is to collect what the former proprietor would have been entitled to demand if the cancelled engagement had never been made,—words which seem to point to something to be done on the change of ownership, not to something to be done after any indefinite lapse of time; and, as before remarked, in terms the power given is only to the purchaser himself, as to whom reasons might apply which would not extend to subsequent purchasers from him. Their Lordships, however, pronounce no opinion on this question, it not being necessary to decide it. They say no more than that a construction which would render the title to property necessarily uncertain, ought not, in their judgment, to be given to a power of this description.

V. On examining the regulations, their Lordships are satisfied that the respondent's case can rest only on the power given by the section in question; and they are of opinion that those powers, assuming them to be in force, will not support the present action. They are glad to find that it is not their duty to support a claim which appears to them to be unjust. During the long period for which this property has been held at a small unvarying rent, it has been bought and sold, and changes and improvements have been made, no doubt at a considerable expense, and upon the faith of the rent to the zemindar continuing unchanged;—he has purchased while that state of things existed, and, it must be presumed, for a price calculated accordingly; and it is manifestly unjust that he should be allowed to disturb it.

32. The second case mentioned in para. 31 was that of a putnee tenure in a zemindary which, thirty years before the suit, had been sold for arrears of revenue. The possession had ever since remained undisturbed; but the respondent, Mohesh Chunder Mitter, who derived from the auction-purchaser, claimed a right to enhance the rent of the putnee. The Privy Council's judgment was as follows:—

I. Upon the evidence their Lordships have no doubt that, at the date of the earliest of the Government sales, those whom the present

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appellant represents were, by virtue of the pottah, in possession of the land which it covers, at a fixed rent, under a sub-tenure binding upon the then zemindars.

II. It follows that the respondent's right to enhance the rent, which implies a right to vary the terms of the sub-tenure, and to set it aside if that title to enhance be disputed on grounds inconsistent with the obligations of such a dependent tenure, must, if it exists at all, depend upon the peculiar and statutory powers acquired by a purchaser at a sale for arrears of revenue. * *

(a). That neither of the respondents is entitled to exercise the statutory powers of a purchaser at such sale, has been strongly argued by the learned Counsel for the appellant, upon the following, among other, grounds: The sales took place under Regulation XI of 1822; and the rights of the purchasers, through whom the respondent's claim, were defined by the 30th and three following sections of that regulation. These enactments were repealed by the 1st section of Act XII of 1841; and all the provisions of that Act, with the exception of the first and second sections, were again repealed by Act I of 1845, which, as modified by some subsequent Acts, is the existing Sale Law.

(b). Neither of the two last-mentioned Statutes contains any saving of rights acquired under the Statutes which it repealed; and though each gave to purchasers at sales for arrears of Government revenues powers equal to, or even larger than, those given by the repealed Statutes, it expressly limited those powers to purchasers at future sales, i. e., "sales under this Act." The respondents, therefore, cannot invoke Regulation XI of 1822 as the foundation of these alleged rights, because that has been absolutely repealed; and they cannot call in aid the subsequent Statutes, because they have given no power to purchasers at sales which took place before they were passed.

(c). This point, though it seems to have been overlooked in many cases in India, is not now adjudged here for the first time. It was fully considered and determined by this Committee in the case of the Ranee Surnomoye *vs.* Maharajah Sutteeschunder Rai (10 Moore, p. 123). The Judges of the High Court have attempted to distinguish that case from the present, on the ground that in the former the sale relied upon was made under Regulation XLIV of 1793. But the statement proceeds upon a misapprehension of the facts of the earlier case. For in that, as in these, the sale on which the power to enhance depended had taken place under Regulation XI of 1822; and it was not until they found that they could not support their case, either on that repealed regulation or on the subsequent Acts, that the learned Counsel for the respondent, the Maharajah, fell back on the 5th section of Regulation XLIV of 1793, which, though suspended by the subsequent legislation on the subject, had never been expressly repealed.

III. Their Lordships must also observe that, in the judgment delivered in that case, it was carefully considered whether a sale for arrears of revenue of itself merely, and without any act, proceeding, or demonstration of will on the part of the purchaser, altered the character of the tenure. And it was declared that the Sale Law had not "that hard and rigid character." It is true that the judgment, assuming that the powers given by Regulation XI of 1822 had been swept away by

the repeal of that Statute, dealt only with the effect of a sale under Regulation XLIV of 1793. But what it laid down concerning such a sale may even, *à fortiori*, be predicated of a sale under any of the subsequent Sale Laws, and in particular of one under Regulation XI of 1822. For the words of the Regulation of 1793 (section 5) are, that all engagements of the former proprietor, and all under-tenures granted by him, shall "stand cancelled from the day of sale"; whereas the Regulation of 1822 (section 30) enacts that "all tenures which may have been created by the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all tenures which the first engagee was competent to set aside, alter, or renew, shall be *liable* to be avoided, and annulled by the purchaser," &c.,—expressions which far more strongly than those of the earlier regulation import that the estate is not, upon a sale for arrears of revenue, necessarily and *ipso facto* changed in its nature and incidents. And, if this be so, the repeal of the regulation which destroys the power to change the estate must leave its freedom from change, independent of mutual will, unimpaired.

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XVIII.

DORMANT OR
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OF ENHANCE-
MENT UNDER
SALE LAWS
BEFORE 1845.

Para. 32, contd.

IV. Their Lordships, then, being clearly of opinion, both upon principle and the authority of the decision in the 10th Moore's Indian Appeal, that the respondents cannot now for the first time exercise powers which, if they ever existed, existed only by virtue of the repealed sections of Regulation XI of 1822, do not deem it necessary to consider whether the stringent powers given by those enactments to purchasers, *enomine*, could in any case be exercised by the heirs or assignees of such purchasers. Justice and sound policy alike require that, inasmuch as the law has given them for the particular purpose only of enabling the purchaser again to make the income of the estate an adequate security for the public revenue assessed upon it, and the exercise of them cannot but occasion great hardship to under-tenants and insecurity to property, they should be exercised within a reasonable time. And their Lordships believe that that object has now been in some measure secured by Acts X and XI of 1859.

V. Their Lordships have further to remark that—

(a). In the case of the Rance Surnomoye, to which they have already referred, this Committee, whilst it carefully abstained from determining whether, upon the true construction of all the Regulations taken together, the 5th section of Regulation XLIV of 1793 ought to be taken to have been repealed, nevertheless proceeded to consider whether that enactment, if assumed to be still in force, would support the respondent's case. And, after putting upon the clause the construction stated at page 147 of the Report, the judgment ruled that the purchaser had an option to confirm the existing rate of rent, and must, upon the evidence in the particular case, be taken to have exercised that option in favour of the dependent talukdar.

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(b). Their Lordships must reiterate the doubts expressed by those who decided the case of the Rance Surnomoye, whether the clause in question can be held to be in force for any purpose but that of declaring the general principles upon which all the subsequent legislation has

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proceeded, *viz.*, that of putting a purchaser at a sale for arrears of revenue in the position of the party with whom the perpetual settlement of the estate was made. They do not think that a party who has lost the particular rights which were given to him, or to the purchaser whom he represents, by any of the subsequent statutes, can fall back upon the old law which has been so repeatedly modified.

33. From these decisions of the Privy Council it appears that, until 1858—

I. Where any land paid rent not less than the established *pergunnah* rate of 1793, the *status* of the holder of that land, as tenant or ryot, was not affected by the sale for arrears of revenue of the estate on which the land was situate. Alike under the Sale Law of 1793, as under subsequent Sale Laws down to 1858, the purchaser, even if asserting, immediately on his purchase, his powers under the Sale Law for the time being, could not have enforced more than the *pergunnah* rate which was being paid; that is, the Sale Law could not have been put in force against the holder of that land, the payer of that rate.

II. And even those who, at the time of sale, may have been paying less than the established *pergunnah* rate, were exempt from disturbance in their possession at that favoured rate, if each successive purchaser of the estate at a public sale did not, within a reasonable period after his own purchase, prove and enforce his right of enhancement under the Sale Law for the time being: by abstaining from the exercise of that right, within a reasonable period, he confirmed the favoured rate, against himself and his representatives, until the next sale of the estate for arrears of revenue.

III. Thus, even before 1841, rights of enhancement under the Sale Law for the time being, which a purchaser of an estate at a public sale for arrears of revenue may have allowed to be dormant, died after a reasonable time; and a formal record that they were extinct was entered in Act XII of 1841 (see para. 30), which repealed all previous Sale Laws, without saving any rights of enhancement that may have subsisted under them up to 1841. Dormant, but not extinct, rights, in the interval between the passing of Act XII of 1841 and its repeal by Act I of 1845, were extinguished in like manner by the latter Act.

IV. Hence, whatever titles by prescription may have been growing, outside the range of the Sale Laws, from 1793 to 1858, the growth of such title was not interrupted by those laws, except in the specific instances in which

rent was actually raised by a purchaser of an estate, at a public sale, under the powers conferred by the Sale Law for the time being.

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XVIII.

POWER UNDER
SALE LAWS OF
ENHANCEMENT.
Para. 33, contd.

V. In establishing these positions, the Privy Council held, as the governing principle of the Sale Laws from 1793 to 1858, that the possession of a holder of land, at the rate which he might be paying, was not to be wantonly disturbed by any sale for arrears of revenue of the estate on which his land was situate. It could be disturbed only for the purpose, and to the extent, of giving to the purchaser, out of the yearly proceeds of the land concerned, merely the same means of providing the revenue payable to Government by the zemindary, which the original engager with Government for that revenue derived in 1793 from that land; that is to say, in none of the cases in which rent may have been enhanced under the Sale Laws from 1793 to 1858 should it have been raised higher than the established pergunnah rate in 1793.

34. The law of limitation which existed up to 1850 may be conveniently set forth in the next Appendix.

APPENDIX XIX.

ENHANCEMENT OF RENT FROM 1859.

APP. XIX. 1. The law of the limitation of suits in Bengal was established in 1772 on the basis of the Native law. Provincial Courts of Dewannee, with jurisdiction in revenue suits as well as civil, were established by an order of 21st August 1772, and the Court of Sudder Dewannee Adawlut by an order dated 11th April 1780. Both these orders declared a law of limitation, fixing for the institution of suits of all kinds (including rents) a limit of twelve years, on the basis of the Mahomedan law. "Demands of rent" were enumerated in the earlier order among the suits cognizable in the Civil Courts which were to observe this law of limitation; and the later order gave to the Court of Sudder Dewannee Adawlut, which had to observe the same law of limitation, cognizance of all—

—
LIMITATION
UNDER NATIVE
LAW AND
BEFORE 1793.

Para. 2.

Supplement to
Colebrook's
Digest, pages 3-4
and pages 13-16.

"Demands of zemindars, talukdars, &c., on their under-farmers, malzamins, inferior landholders, and collectors or others, from whom rents or revenues are immediately due to them; and, in short, all demands for rents or revenues, of persons employed in the collection of them, either officially or hereditarily, in the different gradations downwards from Government to the ryots or immediate occupants of the soil, and again, in the same manner, all complaints of ryots and persons of any of the other above-mentioned denominations, against the persons to whom they pay revenue, in the different gradations upwards, for *irregular or undue exactions*; and in general *for all oppressions which do not fall under the cognizance of the Fouzdary Courts.*

2. The terms irregular and undue exactions and oppression (of the kinds not cognizable in Criminal Courts) were applied in 1772 to 1790, and later, to exactions by zemindars in excess of the customary rates of rent (Appendix XVI, para. 3). In other words, suits for enhancement of rent were included in the law of limitation in the past century. Hence Regulation VIII of 1st May 1793, section 49, provided as follows:—

"It is to be understood, however, that istemrardars (mocrerydars) of the nature of those described in section 18, who have held their land

at a fixed rent for more than twelve years, are not liable to be assessed with any increase, either by the officers of Government or by the zemindar or other actual proprietor of land, should be engage for his own lands." APP. XIX.

LAW OF LIMITATION FROM 1806.

Para. 4.

Thus, the ingenious theory that rent is an ever-recurring cause of action, was not known to the authors of the permanent settlement, any more than it had been dreamt of, ever, by the English Parliament. The istemrardars of more than twelve years' standing were held to have acquired by prescription, as if no such theory was in reason conceivable.

3. The law and the usage of limitation under Native rule and under the orders of 1772 and 1780, were not abrogated by the Regulations of 1793. Rather, the limitation of twelve years, recognized in that law and usage for all suits, including rent suits, was repeated in Regulation III of 1793, section 14. Furthermore, Regulation VII, 1799, section XV, clause 8, enacted that in all cases excepting ejectment for arrears of revenue "the Courts of Justice will determine the rights of every description of landholder and tenant, when regularly brought before them, whether the same be ascertainable by written engagements, or defined by the laws and regulations, or depend upon general or local usage, which may be proved to have existed from time immemorial." Now, the disputes between landlord and tenant relate entirely to (1) possession of and title to land, (2) enhancement of rent; indeed, it may be said that, as between zemindar and ryot, they relate solely to enhancement of rent, for, unless there is a dispute about rent, the zemindar does not dispute the title to occupy. These disputes about enhancement of rent the Civil Courts were expressly empowered, thus, to determine according to immemorial usage, in the absence of written engagements, and we know that down to 1859 there were no written engagements for the great body of the millions of cultivators in Bengal. Hence, if ever any class of suits was expressly designated as determinable by the law of prescription, it was the suits for enhancement of rent.

4. Not long after, Regulation II, 1805, was passed "to explain the existing limitations of time for the cognizance of suits in the civil Courts of Justice, to provide further limitations with respect to certain suits," regular and summary, and to make other provisions, &c. The following passages occur in that regulation:—

I. The period of twelve years adopted in all these provisions appear to have been established when the administration of civil justice was first committed to the servants of the Company, on the institution of the

APP. XIX. Dewannee Adawlut in the year 1772 ; and in the plan for the administration of justice then proposed by the Committee of Circuit (which was adopted by Government on the 21st August 1772), it is remarked that "by the Mahomedan law all claims which have lain dormant for twelve years, whether for land or money, are invalid ; this also is the law of the Hindus, and the legal practice of the country." This observation does not appear to be correct with respect to the Hindu and Mahomedan laws, though it may have been so with regard to the legal practice of the country ; and whether previously established or not, the rule having been now in force above thirty years, it would be improper to abrogate it.

LAW OF LIMITATION FROM 1805.

Para 4, contd.

Claims for enhancement of rent were not excepted.

II. The declared grounds, however, on which this limitation was introduced, * * viz., "the litigiousness and perseverance of the natives of this country in their suits and complaints, often productive not only of inconvenience and vexation to those adversaries, but also of endless expense and actual oppression," are not applicable to suits for the recovery of public rights and dues which may be instituted on the part of Government, &c. For such suits and claims the unlimited time heretofore allowed by the laws of England (as by those of the Hindus) has been latterly restricted to a period of sixty years, being the largest period fixed for the judicial cognizance of the claims of individuals in particular cases. * *

III. The period of time required to establish a right of usucapion and prescription has been different under different legal provisions, and being arbitrary, the Governor General in Council does not judge it necessary to alter the period which has been so long established in these provinces * * in the judicial prosecution of demands of rights beyond that period.

The regulation then proceeded to modify the previous law, so as to enlarge the period of limitation for certain cases, but without abrogating the usage, or those parts of the previous law under which, as already shown, the law of limitation applied to suits for the enhancement of rent. On the contrary, the right of Government to place an assessment on "land held exempt from the public revenue without legal and sufficient title" was expressly stated to be within the law of limitation, a period of "sixty years from and after the origin of the cause of action," &c., having been fixed for the assertion of the claim in a regular suit. It had not dawned on the Government of 1805 that rent was an ever-recurring cause of action.

5. It was held by the Sudder Court before 1859 that uninterrupted occupation, since 1793, for more than twelve years at a uniform rate of rent, did not create a right to permanent occupancy at that rent, because the zemindar's title to assess at an enhanced rent, at any time, is not barred by the law of limitation, the law being inapplicable to suits for enhancement

of rent because rent is an ever-recurring cause of action. The cases which are held to have established this doctrine, to the ryot's prejudice, are as follows :—

LAW OF LIMITATION FROM 1806.

Para. 6.

I. 1845, *3rd December*.—Meertinjoy Shah, a dependent talukdar, Appellant, *versus* Zemindar, Gopal Lal Thakoor, Respondent.—Vol. VII, page 217.

II. 1845, *26th April*.—Digumber Singh sues to fix the rent demandable on the defendant's lands. A former suit instituted by the petitioner's father, for possession of the said lands, was thrown out on 17th August 1817, with reservation to sue for an adjustment of the rent. The defendant evidently was a dependant talukdar. (Sudder Court Decisions, 1845, page 129.)

III. 1823, *Vol. III, Select Reports, page 221*.—Khazee Neekoos Marhan, zemindar, *vs.* Ram Lochan Ghose, dependent talukdar.

IV. 1831, *March*.—Musammut Deb Rani, *rs.* Ram Narayan Nag; suit for rent on 197 beegahs of land; clearly not an occupancy cultivator; apparently a dependent talukdar.

V. 1847, *page 275 of Reports*.—Jewar Singh and others; or a zemindar suing to recover rent for certain orchards for which rent never had been paid for a period anterior to the decennial settlement. The disputes had brought the matter before the criminal courts, whence it was referred to arbitration, &c. Evidently the claim was against a dependent talukdar, not against an occupancy cultivator, who would be a rare creature if he could contest with his zemindar by club law the possession of orchards.

VI. *Pages 346-47, and 1848, 18th May, page 455, Zemindar versus —*

Status of defendants not known, but suits held to be governed by the decision in I.

6. In these cases the suits concerned dependent taluks, created since the decennial settlement, or similar holdings under lease from the zemindar, that is, other than the holdings of occupancy ryots. Perforce, a tenant holding under a lease from a zemindar cannot acquire rights by prescription, or under the law of limitation. The doctrines affirmed in one or other of the decisions were as follow :—

I. The rent of land is an annually recurring cause of action (I in preceding detail).

This doctrine is opposed to the principles of the English law of limitation, and also to the Indian (Appendix XVII, paras. 34 and 35; and paras. 2 and 3 in this Appendix).

II. The forbearance of the zemindar for the past to assess newly cultivated land, or his assessment of cultivated land at an inadequate rent, could not be a bar to his claim to assess at full rates for the future, unless he had come under a contract *not* to assess at full rates.

APP. XIX. This dictum was laid down in case I, or that of a dependent talukdar; and from its terms it could only apply to rents of tenures over that of the ryot, which are matter of contract between the zemindar and tenant. The payment of the established pergunnah rate of 1793 by a ryot was not a subject of contract with the zemindar; it was prescribed by law.

LAW OF LIMITATION FROM 1805.

Para. 6, contd.

III. A claim for rent is not barred by lapse of time (case V).

This dictum was in the case of a dependent talukdar. Under English law a claim to tithes, or to other rent not depending on contract with the landlord, is barred by lapse of time (Appendix XVII, paras. 33 to 35; see also I. in this paragraph). In another case in 1850 (19th September, page 494-5), a zemindar and his farmer sued to set aside a perpetual lease under which a ryot held certain land in their zemindary, &c. It was held that—

“No lapse of time applied to such a suit, under the precedents on the subject, and the validity of the perpetual lease is open to question. We therefore remand the case to the Judge of Patna, who will re-try it with reference to the above remarks.”

The ryot having claimed under an alleged perpetual lease, evidently his claim was to pay less than the pergunnah rate. Manifestly the ruling was beside any question of occupancy right subject to payment of the pergunnah rate. Under the Regulations of 1793, the pergunnah rate, plus *abwabs*, of 1790, if fixed in money, was not liable to increase; accordingly, the amount of rent for the earliest year since 1790 for which a ryot could prove payment on account of his holding, was, for that holding, the permanent pergunnah rate, unless the zemindar could produce documentary proof of the ryot's liability to pay a higher rate.

7. The decisions in the preceding two paragraphs were inapplicable to occupancy cultivators, who seek to pay the established pergunnah rate, and no more; and they were passed adversely to the defective titles of those who held under temporary or expired leases from zemindars. The suit of Digumber Mitter (plaintiff), appellant, *vs.* Ramsoonder Mitter (defendant), respondent (24th July 1856, page 617), was, however, against a ryot or cultivator. In it the plaintiff sued to enhance the rent of 7 beegahs and 3 cottahs of land; the defendant pleaded length of possession at a fixed rate, and the District Judge dismissed the claim on the

ground that the plaintiff having succeeded to the rights of an auction-purchaser who had acquired the estate in 1837, and had received from the defendant no more than the fixed rate pleaded by him, the plaintiff could not, after the lapse of twelve years, enhance the rent of defendant.

APP. XIX.
LAW OF LIMITATION FROM 1808.
Para. 9.

8. On the part of the plaintiff, Baboo Ramapershad Roy urged as precedents the several decisions above recited, which, as already observed, were inapplicable to occupancy ryots or cultivators. He argued—

(a). The theory of the law of limitation when applied to land is that when the possession is adverse, it applies; when only permissive, no question of title arises.

(b). The pleader refers to Angell's *Law of Limitation*, as between landlord and tenant, pages 540 and 542 read out.

The reference to Angell's *Law of Limitation* was irrelevant (para. 6, Sections II and III of this Appendix, and Appendix XVII, paras. 33 to 35). In the other plea (a) the assumption that the ryot's holding was permissive, only begged the question as regards resident cultivators who occupy at established pergunnah rates under the Regulations of 1793;—the zemindars, so far from being empowered to eject ryots who occupied on pergunnah rates, were bound to give them pottahs specifying the pergunnah rates of rent payable for the ryots' holdings.

9. The Court, misled by Baboo Ramapershad Roy's pleading, decided that the law of limitation did not bar a suit for enhancement of rent, even though twelve years may have elapsed since the cause of action arose. They relied on the following reasons:—

I. In 1849 the Court tried a question "whether, in the absence of a *pottah* or *kabuliut*, which can be proved to be authentic by either zemindar or ryot, a ryot, who had paid an uniform amount of rent, as for a certain supposed quantity of land, for more than twelve years, is thereby debarred from claiming a measurement of the land actually in his occupation, and reduction of his *jumma* upon the *pergunnah* rates according to the result of such measurement." In the absence of an agreement binding the ryot to pay a specific amount of rent, irrespective of the quantity of land actually held by him, the Court was "satisfied that the ryot is not barred, by having paid an uniform rate for twelve or more years, from claiming a measurement, in the same manner as a zemindar has always, when not bound by express engagement, a claim to a like measurement."

Here the question was not the rate of rent (which, under the law, could not exceed the pergunnah rate), but whether the ryot should be barred from discontinuing payment of

APP. XIX. the pergunnah rate for land *not* held by him. Yet the Sudder Court in 1856 argued that this precedent of 1849, and the other irrelevant precedents before mentioned,

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PARA. 9, CONTD. must be held to establish the principle that, unless the landlord and tenant are bound by express engagement to an uniform rate of rent, the right to raise or reduce it, however dependent on other circumstances which may govern each particular case, is a right that cannot be disputed on the plea of lapse of time, nor be extinguished by prescription.

The regulations of the decennial settlement enacted that all ryots should pay the ancient established pergunnah rates, unless they could claim lower rates under special agreement with the zemindar. The preceding doctrine, reversing the Regulations of 1789-93, lays down that the ryot must pay any rent the zemindar pleases, unless a uniform rate of rent is secured to him under an express engagement. There is no authority for this beyond the irrelevant decisions before mentioned, which apply only to such rents as are the subject of contract or leases by the zemindar with tenants holding between the zemindar and the ryot. And even those decisions do not affirm the zemindar's right to enhance beyond the pergunnah rate, but simply his right to challenge any rent as being below the pergunnah rate.

II. The Court in 1856 continued :—

The appellant's pleader has also proved, by the submission of competent authorities on the subject, that, under the English statutes, the law of limitation and prescription was held not to apply to suits of the nature before us. The reasoning on this seems to be that, as the tenant's possession is from the first a possession with the *consent* of the landlord, it must be considered as *permissive*, however long it may continue, and that no length of time can, therefore, bar the landlord's right of recovery, or secure to the tenant a title adverse to the landlord's interest.

"The connection between landlord and tenant in this country commences on a similar understanding. The under-tenant in Bengal, whether holding by pottah or as a tenant-at-will, occupies his land with the consent of the zemindar, and the rent, however determinable, is only a consequence of the arrangement. Should the zemindar content himself with less than the local rates in the case of a tenant-at-will, the law only imposes on the zemindar the necessity of serving such tenant with a notice before he can legally raise them ; but the precedents of this Court cited above clearly indicate that the construction put upon the law here as well as in England is the same, and that the failure or forbearance of the zemindar to demand an increase of rent during 12 years will not change a tenant-at-will into a tenant with permanent rights of occupancy.

III. In this argument there are three statements :—

(a). That the under-tenant, whether holding by pottah or without it, occupies his land with the consent of the zemindar.

(1). This is incorrect. The permanent settlement, according to the declaration of its authors and of the Home authorities, was designed to afford to the zemindar and to the ryot, alike, the same security, that each should enjoy, the fruits of his own industry. Any subsequent regulation, at variance with this declaration, would have been a breach of the permanent settlement. The legal status of the ryot was the same in 1856 as in 1793. Now, it was not the case in 1793 that the mass of the cultivators in Bengal, *viz.*, the cultivators resident in their own villages, occupied their land with the consent of the zemindars: they occupied in their own right subject to payment of the ancient established per-gunnah rates. This is proved by the custom of 1793 and by the fact that, even so late as 1859, according to the British Indian Association, the bulk of the lands in Bengal was held without pottahs and kabuliuts, *i. e.*, in accordance with the custom which prevailed in 1793. Under Native rule the State, and under British rule, up to 1793, the Government, and consequently the zemindar, could no more appropriate a ryot's land without buying it, than they could appropriate any other private property; and the permanent settlement was designed to confirm and preserve—not to destroy—the rights of the ryot. This disability in the zemindar to take his ryot's land without buying it, holds true to the present day. Thus, Mr. Justice Seton-Karr observed (2nd June 1864)—

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Para. 9, contd.

“If a zemindar himself wishes to establish a *haut*, to build a temple, to erect a *serai*, to enclose a garden or pleasure-ground, and has not either a piece of vacant ryotty land or of *khamar* or *nij-jote* land at his disposal for this object, he is *forced* to treat with a tenant even on his own estate, and to take a pottah from him. I do not believe that it ever entered into any zemindar's head to think that he could occupy land for such a purpose without recourse, previously, to such a formality. Scores of zemindars all over the country hold hundreds of ryotty and subordinate tenures in this way in their own estates as well as in the estates of their rivals and opponents, and while holding such tenures are possessed of the status of, and are subject to all the conditions imposed on, a ryot.

Mr. Seton-Karr showed that this disability of the zemindar to dispose of his ryot's lands at his pleasure, as the lands of tenants-at-will, was not consequent on the possession of permanent leases by the ryots; he added that, outside Behar, “between many zemindars and ryots there has been no interchange of pottahs and kabuliuts at all” (see Appendix XIX, para. 13, section IIIc).

(2). In the statement (a) above quoted, the Court could conceive of only two kinds of ryots, *viz.*, *pykasht* ryots, or

APP. XIX. non-resident cultivators from another village, who were tenants-at-will, or were inchoate occupancy ryots, and such khoddkasht ryots as held at less than the pergunnah rates, under special agreement; the bulk of the ryots, *viz.*, the resident cultivators in each village, who held without pottahs, at the established pergunnah rates, under a custom which no law had terminated, were overlooked by the Court, through a strange omission. Had the Court remembered the millions of this class of ryots, they would have overruled Baboo Ramapershad Roy's argument that the ryots, being tenants under lease, or tenants-at-will, could not have acquired right of property under the law of limitation, inasmuch as that law operates in favour only of adverse possession. Here was another error. It has been shown (Appendix XVII, para. 17) that, with respect to land which originally was *res nullius*, and which was acquired by reclaiming it from waste, or by inheritance from those who had reclaimed it from waste (and such was the position of all resident cultivators in a village), a right obtains superior to that of adverse possession. In virtue of the right, the possessor of the land has a simple title, free from those *accidental facts of title* arising from *transfer* of the land, which alone necessitate the condoning, through the law of limitation, of any defective proof of those facts. The claim of resident cultivators is, not that they may be allowed to hold by reason of long-continued adverse possession, but that they may be left undisturbed in the possession of land obtained from *res nullius* by their ancestors or by themselves. They assert this claim on a double ground, *viz.*, first, under the principles, alike of universal law and of English law, which determine the right to land that has never been alienated since its reclamation from waste, and which throw the *onus* of proof on those who challenge the right (whereas the Court threw the *onus* of proof on the ryot); *secondly*, under the laws of usage and prescription under the permanent settlement, which secure the ryot's privilege of paying as land tax no more than the ancient established pergunnah rate of rent.

(b). That if the zemindar has contented himself with less than the *local rates* in the case of a tenant-at-will, the law only imposes on the zemindar the necessity of serving the tenant with a notice before he can legally raise the rate.

If "local rates" mean the ancient established pergunnah rates, this statement was correct, but in that case twelve years' occupancy at the pergunnah rates would mature into

occupancy right, for the law of 1793 did not allow the zemindar to exact more than the established pergunnah rate; all that he might levy in excess was exaction. If, however, the rates intended by "local rates" were those to which zemindars may have raised the rates of rent upon ryots, from 1841 to 1856, beyond the ancient established pergunnah rates, under an erroneous reading, and a misapplication of the Sale Law of 1841 (Appendix XVIII, para. 28), then the Court's reasoning was vitiated by this misapplication to pergunnah rates for ryots of local rates, which, under the Sale Laws of 1841 and 1845 and the laws of 1793, could, at the zemindar's option, be raised only against tenants who held between the zemindar and the ryot.

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LAW OF LIMITATION FROM 1806.
Para. 9, contd.

(c). The failure or forbearance of the zemindar to demand an increase of rent during 12 years will not change a tenant-at-will into a tenant with permanent rights of occupancy.

If the rent which the Court supposed to be paid during the twelve years was less than the ancient established pergunnah rate, they raised a false issue; for, under the immemorial custom which determined occupancy right to land, the right (failing a special agreement for a lower rate) was subject to payment for the land of the established pergunnah rate. If the rent implied in the Court's statement was the established pergunnah rate, the Court discussed either an absurdity, or a distinction without a difference: an absurdity, because an increase of the established pergunnah rate which had been paid for twelve years, or even for only one year, was inconceivable under the law; a distinction without a difference, because, so long as the cultivator was not disturbed in his possession by being required to pay for his land more than the established pergunnah rate, as understood by the authors of the decennial settlement, it mattered not to him whether you called him or not an occupancy ryot.

IV. Lastly, in the decision of 1856, the Court observed—

(a). It has been argued by Baboo Sumbhoonath Pundit, on the part of the ryot, that the landlord's receipt of rent at a uniform rate during more than twelve years, is evidence of his having abandoned his right to demand more, and prevents the exercise of the right ever after. But the payment of the same rent for a considerable time by a tenant cannot be proof of the landlord's intention to restrict his own right of demand; it is far too ambiguous a fact to allow of any such conclusion being drawn in favour of the tenant.

This objection or reasoning of the Court was over ruled by the reasoning of the Privy Council (see Appendix XVIII, para. 32, Section Va, last sentence).

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Para. 9, contd.

(b). It is moreover an argument practically inconsistent with any application of the limitation law. If that law, as assumed, barred the right of the landlord to re-assess the lands *for ever*, he could not exercise that right in the event of the lands being abandoned by the present occupant; the application of the law would not only affect his right over the present tenant, but would apparently fix the rent of the land at the present rates *for ever*.

(1). In the passage in italics we trace the error which pervades most of the voluminous discussions of the Rent Laws, *viz.*, that ryot's rent, as established in Bengal by the permanent settlement, was a personal obligation, which varied on each holding with the class of ryot, whereas it was a permanent pergunnah rate of rent laid upon the land of each holding, which rate was to be paid by the occupant or holder, unless he could prove his title to pay a lower rate, conformably with the specific conditions laid down for such favoured rates in Regulation VIII of 1793. The general or permanent rate upon the land was not liable to enhancement (Appendix XVI, paras. 16 and 24 to 28).

(2). From before 1789, throughout Bengal, the ancient established pergunnah rate was a rate fixed in money, and therefore not liable to increase from a rise of prices. Increase from a rise of prices was in the form of an *abwab*. In the regulations of the decennial settlement it was enacted that the established pergunnah rate, as paid throughout Bengal in money, and existing *abwabs*, should be consolidated in one amount, to be specified in money; and this amount, fixed in money, was to be the rent leviable thereafter from the ryot as the pergunnah rate of rent. The regulations did not provide for any future revision of the rate thus fixed; on the contrary, they prohibited fresh *abwabs*, or the only form of revision of assessment by which, up to 1789, an increase of rent on account of a rise of prices had been levied under Native rule. The terms of the regulations, too, showed that the money rent thus to be determined in 1793, and entered in the ryot's pottah, was designed as the permanent rent. Coupling these facts with the explicit declarations of Lord Cornwallis and of the Court of Directors, that the ryot's rent was to be as permanently fixed as the zemindar's, and applying the ordinary rules of interpretation (Appendix XVII, para. 36), it was the unmistakable purpose of the Regulations of 1793 to preclude the zemindars from raising, ever after, the rate of rent once entered in the ryot's pottah, in obedience to the Regulations of 1793. And it follows that a money rate of

rent, once accepted from a resident cultivator, since 1793, becomes the expression of the pergunnah rate payable by him, unless the zemindar can prove that it is less than the pergunnah rate; yet in the preceding extract (b), the Sudder Court in 1856 considered it monstrous that the rate of rent on land should be fixed for ever, as designed by the authors of the permanent settlement.

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(3). There was thus a complete contradiction by the Sudder Court in 1856 of the authors of the decennial settlement of 1789; this divergence between the unmistakable purpose of the law in 1793 and the judge-made law of 1856 (judge-made, be it remembered, by judges who from 1793 to 1856 were ignorant of the rules of equity) is, perhaps, best illustrated by the terms applied in this very suit, and in the Regulations of 1793, respectively, to the maximum rent payable by the ryot. In the Regulations of 1793 that maximum was defined as the established customary rate of the pergunnah. In the suit of Degumber Mitter *vs.* Ramsoonder Mitter, the decree in the Subordinate Moonsiff's Court was for "enhanced rate of assessment according to the actual value of the land." In the pleadings for appellant and respondent, alike, pergunnah rates were not mentioned; in the judgment by the majority of four Judges out of five, the term used is "local rates" in contradistinction to a "fixed rate"; and lest any definiteness should be imparted to, or implied in, the term "local rates," the next paragraph to that in which the term "local rates" is used affirms the zemindar's right to re-assess his lands when he can, at an increase upon the rates previously paid by the ryot, thus converting "local rates," into whatever the zemindar chooses to make them. It is not surprising that, under such a reading of the law, local rates throughout a pergunnah or zemindary have been raised in one night by the mere fiat of the zemindar (Appendix XIII, para. 7 s 4 a 6 Gya); but it is surprising that local rates, susceptible of such manipulation, should ever have been deemed consistent with the State's obligation, under that permanent settlement in which the faith of Government was as solemnly pledged for a limitation of demand, to the ryot as to the zemindar.

10. The change from the pergunnah rates of 1793 to the competition rates claimed by zemindars in 1863, was brought about by the obliteration of the pergunnah rate through the wrong-doing of zemindars, in which they were assisted by the Huftum and Punjum Regulations of 1799 and 1812.

APP. XIX. and by the inaccurate phraseology of Regulation XI of 1822, and of the Sale Law of 1841. Sir George Campbell, in his judgment on the great rent case, gave an account of the progress of the change, which may be quoted :—

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Para. 10, contd.

I. Such being the laws, it may be conceded that, from the time of the permanent settlement, the zemindars have been free to make such arrangements and contracts as pleased them, regarding all land in which no rights were held by ryots or others, at the time of the settlement, or which at any time might lapse by the failure or abandonment of the ryots; subject to this, that a man once admitted on an ordinary khoodkasht tenure, without limitation of time, could not be ejected or enhanced beyond the customary rates, except in certain cases by an auction-purchaser.

Sir George Campbell was wrong. Under the Regulations of 1793, the zemindars were restrained from taking more than the established pergunnah rates, from old lands or new, from old ryots or new, from resident cultivators or non-resident cultivators (see Appendix No. XVI, para. 15, and No. XVII, para. 30).

II. The question is, what, in fact, did the zemindars do? Did they, by the investment of capital, cultivate the waste for their own benefit? Did they take every opportunity of asserting an absolute right in every field that lapsed, and farm it out, on true commercial principles? Or did they, in truth, adhere to the old practice and customs of the country, and seek to increase the rent-roll, merely by settling new ryots on the old customary terms, leaving them to cultivate in their own way, and to occupy the land without limitation of time, subject to the payment of the rents established by the custom of the locality? It is notorious and well established by history, both general and judicial, that the latter was almost the universal rule. The zemindars did not invest capital in agricultural operations after the modern fashion. They did not seek to get rid of the old ryots and the old system, and to establish large commercial farms. On the contrary, the endeavour was to get new ryots. Ryots were considered to be the only riches; and the struggle of a good landlord was not to get rid of the ryots, but to tempt away another man's ryots by the offer of favourable terms. The ryot who was settled on waste or other ryoti land, cultivated it, stocked and furnished it, built his house, and dug his tank at his own expense, or by his own labour.

III. Hence it naturally followed that, according to the ancient custom and present understanding between the parties, the new ryot, who permanently settled in the village as a khoodkasht or resident ryot, acquired all the rights, privileges, and immunities accorded by usage to khoodkasht ryots. The ryots so settled were protected in the first instance by law in case of sale; and after the passing of Regulation XI of 1822, they were in practice protected by habit and the interest of the purchaser, and resumed their former status.

IV. Of resident ryots, only the few who may have come in under special contracts at variance with the custom, or whose tenures passed

under the Sale Laws of 1841 and 1845, held on any other than the customary terms. In every case that comes before us, it is patent that, up to the present day, rents in Bengal are usually regulated by the customary rates; sometimes in the shape of pergunnah rates, more generally in that of local rates, universally known in each estate or part of the country. Frequently, zemindars know nothing of their estates, have no clue to the actual positions of each jumma or ryot's holding, but simply collect on a paper roll showing the annual payment due from each ryot according to the custom.

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Para. 10, contd.

V. But were the customary rates varied or enhanced, or how were they regulated?

(a). It seems a somewhat singular omission that in the regulations no provision is made for any enhancement of the pergunnah rate payable in money.

The reason of the omission is simply that enhancement was not intended; the authors of the permanent settlement intended, and the Regulations of 1793 prescribed, that the ryot's rent was to be fixed (as the rate thereafter recoverable from him, without indirect increase in the form of new *abwabs*) at the amount which he paid in 1793.

(b). It is remarkable¹ that, throughout the whole litigation of the long period between 1793 and 1859, no principle of enhancement, other than a reference to existing pergunnah or local rates, is anywhere to be found. There have been conflicting decisions as to the prescription by which right of occupancy was acquired, and great doubt was then thrown on that subject; but as regards any rule of enhancement, either at discretion, or on any other rule, save and except the standard of rates paid by the same class of ryots in places adjacent, there is nothing. We have particularly drawn the attention of the counsel on both sides to this point; and it is clear that there is no such case.

Sir George Campbell missed the common-sense inference that a principle of enhancement of rent was not fixed by those who, with great elaboration of detail, framed all the other parts of the permanent settlement, simply because they intended that the rent should not be enhanced.

(c). A common process for increasing the ryot's rent seems to have been a mere repetition of the old process by which Tooran Mull's assessment was enhanced. In spite of the prohibition against adding *abwabs* or cesses to the consolidated rates of the time of the settlement, illegal cesses (almost always in the regulated form of percentages, so many annas or pie in the rupee, or so many seers in the maund) were from time to time added on, and gradually annexed to the custom; then, as they became complicated and heavy, and led to resistance, compromise was effected, and the extra cesses were merged into a rate somewhat enhanced, to which the ryots consented. Then, as further increase of value took place, more cesses were superimposed on the rates, and presently another compromise took place. Sometimes in one way and

¹ Not so, as explained in the remark on (a).

APP. XIX. sometimes in another, the rates by mutual compromises and consent were from time to time enhanced, and the pergunnah rates were frequently split up into local rates special to estates and sub-divisions, according to the area of each new compromise. Still the new rates always had and have some local area. They were, and are, common to the body of the ryots of that locality. When the majority or body of the ryots had consented to an equitable compromise, an enhanced local rate was established, *and refractory individuals could be and were raised to that standard.*

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—
Para. 10, contd.

In the closing words in italics, Sir George Campbell shows a misapprehension of the permanent settlement. The rate of rent, once fixed in money, for each ryot, according to the pergunnah rate *plus* cesses, paid by him in 1793, became for him, *in law*, a perpetual rent, which was not liable to increase, thereafter, by a fresh re-opening of the inquiry respecting the pergunnah rate. Even the indirect enhancement of that money amount, through fresh *abwabs*, was prohibited. Accordingly, a consolidated money rate of rent, once paid by the ryot and received by the zemindar in 1793, or the year following, as the pergunnah rate of that day, was not liable, *in law*, to enhancement in a later generation. The authors of the permanent settlement did not contemplate the absurdity that all their care for securing mention in a pottah for each and every ryot of the money amount which he should pay thereafter for ever, as the aggregate of the customary pergunnah rate *plus* existing cesses, should be frustrated by the zemindars simply altering the pergunnah rate, through oppression of the ryots by means of Huftum and Punjum, and through the levy of cesses in defiance of the very law which constituted the deed of the zemindar's own permanent settlement with the Government. Yet the pergunnah rates were thus illegally altered by zemindars, and judges allowed the zemindars to profit by their wrong.

11. It appears thus far that—

I. The English law of limitation does apply to tithes and to other rents, definite in amount or definitely determinable, which are not matter of contract. The established pergunnah rate of rent which obtained until 1793, and which the regulations of that year confirmed as the maximum demand leviable from ryots by a zemindar, was of this character.

II. Similarly to the English law, the Indian law of limitation before 1805 did apply to suits for the enhancement of ryots' rent, which rent was determinable by the customary or pergunnah rate. This old law of limitation, in

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its application to these rent suits, was not abrogated by the APP. XIX. Regulation of 1805.

III. From 1805 to 1845, and later to 1856, no decision of the Sudder Dewanny Adawlut, having the force of law, had excluded suits for enhancement of ryots' rents from the law of limitation. Between 1845 and 1856 such decisions were indeed passed adversely to tenants over ryots, *viz.*, to those holding between the zemindar and ryots, who held under lease or grant from the zemindar as a matter of contract; but these adverse decisions related to rents arising from contracts, and accordingly they were on a principle which did not contravene or affect the principle that extends the law of limitation over the ryot's rents mentioned in I.

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Para. 11, contd.

IV. Hence the custom, more ancient than law, under which occupancy rights grew up among the cultivators of land in a village, was not interrupted by the Indian law of limitation, at least until 1856. Rather the law till then strengthened and confirmed the custom.

V. The Regulations of 1793 conferred on zemindars a proprietary right in the alienated portion of the Government's gross demand upon the ryot, which was limited according to established custom; and this was the limit of the zemindar's proprietary right even in land newly reclaimed from waste. This limited proprietary right of the zemindar did not trench on the cultivator's occupancy right, which continued to accrue as before, outside the zemindar's limited proprietary right.

VI. In other words, nothing in the Regulations of 1793 abrogated, put an end to, or interfered with, the ancient custom under which the resident cultivators in a village acquired a right of occupancy in the land which they reclaimed from waste, subject only to the payment of the established or customary *pergunnah* rate of rent.

VII. On the contrary, the Indian law of limitation, conjoined with the Regulations of 1793, made that definite which under the previous custom had been indefinite, *viz.*, the period within which a *pykasht* ryot, by long residence in the village, could acquire occupancy right. The law of limitation fixed twelve years as the period; and the Regulations of 1793 gave effect to the law by requiring the zemindar to give *pottahs* to *pykasht* ryots at the established *pergunnah* rates on expiration of their then existing temporary leases. This fixing of a determinate or determinable *pergunnah* rate of rent, afforded to the *pykasht* ryot the one qualification

APP. XIX. wanting to mature his occupancy into an occupancy right under the law of limitation.

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Para. 11, contd.

VIII. Hence occupancy rights accrued from 1793 to 1856 without let or hindrance from law. The zemindars, indeed, by their power, for long, of might over right—through the *Huftum* and *Punjum* Regulations,—through an unlawful control over a corrupt police,—and through venality of ministerial officers in Civil and Criminal Courts—were indeed able to exact from ryots more than the customary rates of rent; but the payment of variable amounts of rent, under extortion, did not vitiate the occupancy right, *firstly*, because the legal status of any ryot who cultivated land was that of subjection to merely the established pergunnah rate of rent of 1790; whatever was taken in excess was extortion, positively prohibited by law, which, accordingly, the Courts could not recognize; *secondly*, because the amounts extorted were levied as *abwabs*, or cesses, separately from the established pergunnah rates.

IX. In 1856 a decision was passed by the Sudder Court which excluded suits for enhancement of ryots' rents from the law of limitation; but the decision erred in applying to the privileges of ryots precedents which had been established in, and were confined to, the cases of tenants holding under lease between the zemindar and ryot. Other grounds, too, of the decision were wrong in principle and fact.

12. Thus we find that—

I. The custom under which occupancy rights, among the residents of a village, grew up under native rule, was not interrupted by the Regulations of 1793; and accordingly it must have continued in full force, the natives of India being singularly tenacious of custom, particularly of customs affecting land, which are among their most cherished traditions.

II. Occupancy rights among pykasht ryots matured, more surely than before 1793, under the Regulations of that year, and under the law of limitation.

When to these facts we add—

III. The aversion of the cultivating class from migrating to other villages;

IV. The thralldom under which zemindars kept the cultivators as *adscripti glabæ*, thus constraining them to acquire occupancy rights in spite of themselves;—

V. The sparse population, and the extensive waste lands in 1793; the dense population, and the greatly extended cultivation in 1856;—these facts implying that where all

villages were engaged in extending cultivation, each village perforce extended its cultivation through the increase of its own resident cultivators;—

The inference is inevitable that the bulk of the cultivators in 1856 must have been resident cultivators in their own villages, with occupancy rights.

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13. And if this inference be correct, it should be corroborated by the same evidence as under native rule before 1793, viz., that the ryots held without pottahs, subject to payment of the established pergunnah rates. Evidence on this point, and respecting III and IV in the preceding paragraph, may be cited.

I.—CULTIVATORS' UNWILLINGNESS TO MIGRATE FROM THEIR VILLAGES.

(a).—*Baboo Sumbhoonath Pundit, the Editor of the "Hindoo Patriot," and others (27th September 1851).*

(1). The habits of the Bengali people make them adverse to migration, and incapable of bettering their condition by it, and their notions entail some disgrace and considerable social inconvenience on the man who leaves the village of his forefathers.

(2). The population of this country is almost purely agricultural, and few among them have the knowledge, the means, or the inclination, to transfer their labour to other pursuits.

(b).—*Mr. Justice Norman, Great Rent Case.*

(1). Before Act X of 1859, the great majority of cultivating ryots, had their rights been duly observed and maintained, were entitled to hold their lands undisturbed on the due payment of their rent, and could not be compelled to pay rent at a rate dependent on the mere will of the zemindar, or otherwise than according to the customary rates, or those prevailing in the district.

(2). The ryots generally were not migratory, but remained settled on the lands which they occupied. I do not think that the right of occupancy was formerly confined to those who had acquired such a right by prescription. It extended to all who had given unequivocal proof that they intended to remain at the place of their settlement, and who had been recognised as fixed residents of the locality, although their holding may have been of recent date.

(3). The khoodkashts were doubtless, ordinarily, persons who derived their holdings from their ancestors, and whose rights were of old date; but I agree in what I understand to be the opinion of other members of Court, that length of time or ancient origin was not essential to his existence, and that the language of the later Sale Laws unjustly limited the protection given to this class by recognising only the rights of the kudeemee or ancient khoodkasht.

II.—ADSCRIPTI GLEBÆ.

(a).—*Editor of the "Hindoo Patriot," Baboo Sumbhoonath Pundit, and others (27th September 1851).*

We avail ourselves of this opportunity to urge on the attention of Government the necessity of providing for the registry of istafas

APP. XIX. (releases) made by tenants giving up their holdings. It frequently happens that a tenant, harassed by the oppression and the exaction of his landlord, would gladly give up his tenure if he could be assured that with the severance of his connection with the land held by him, his liabilities arising therefrom would really cease. Such an assurance, however, is now unattainable. The landlord has the kabuliut in his hands, with which it is always in his power to enforce all the summary processes enumerated in paragraph 16 against the tenant, whose only means of disenthraling himself from his predial bondage is by a regular suit.

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(b).—*Mr. C. Steer, Officiating Judge, Hooghly (12th July 1851).*

(1). As matters at present stand, the Collector can afford no relief, as he is prohibited from receiving a petition from a ryot throwing up his lands. There is no direct warrant in law for the Civil Court doing so, and Judges generally reject such petitions. The ryot is therefore entirely at the mercy of his zemindar to give him the relief sought for, or to refuse it. It must be needless to say that a zemindar will never acknowledge having received an istafa from his tenant, except when the lands are such as he can readily find another ryot willing to cultivate.

(2).—*Ibid., 26th November 1851.*

There is no disputing that the ryots are horridly oppressed; to what degree, is only known in its full extent to their tyrants. At present ryots are quite at the mercy of their zemindars. There is no legal means open to them of getting quit of any bad lands they may have acquired. * * The term "bad lands" is only relative; lands with a light or moderate rent might be good, which, if burdened with an oppressive rent, would be bad.

If the ryot is not allowed the protection of the police to remove his property, and if summary action and attachments are not barred, his resignation tendered to the Court will profit him nothing. His property will be seized, be the act sheer plunder or under colour of attachment, and the ryot will find it impossible to get it back. If he should complain to the Magistrate, the zemindar will plead an attachment. If he should appear before the Collector and seek the release of his property from an unjust attachment, the zemindar will reply that there has been no attachment at all. So that, if left without aid to remove his property, he will leave his old habitation a beggar, without a pice to support himself or his starving family, and without a bullock or plough, or any other means to cultivate any new farm. Thus he is in a state of thralldom to his zemindar worse than slavery. * * Summary laws and attachment give the zemindar a handle to seize a poor fellow's property, and its recovery is about as probable as if it had fallen into the hands of dacoits. There is no occasion, I feel satisfied, when so much oppression is practised, as when a ryot is known to be meditating the relinquishment of his jote. As the law now stands, he has two alternatives—to remain and bear as best he can a grinding taxation, or to fly, a beggar and a vagabond.

(c).—*Mr. A. J. M. Mills, Judge, Sudder Court (31st August 1852).*

The zemindars or their agents almost invariably deny any knowledge of a ryot's wish to relinquish his lands, if it should happen, which is generally the case, that the land be unprofitable, and the ryot is

thus compelled to continue the cultivation of his fields at a ruinous loss to himself; he can only relinquish his land by emigrating, and then he must depart stealthily or leave all his stock behind him, which is immediately attached by the landlord for balance of rent, whether due or not.

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Para. 13, cont.

(d).—*British Indian Association (24th March 1853).*

At present the ryots have no means, except by a regular suit, of compelling their zemindars to receive their rents, or to accept the surrender of their holdings before the commencement of the cultivating seasons, if no valid objection thereto exists, or of obtaining such remissions of rent as they may be entitled to, under certain circumstances, by the custom of the country, or the conditions of their agreement. They are consequently liable to be harassed by their landlords, whenever the latter may see fit to oppress them.

Six years later (14th February 1859) the Association conceived the happy thought that if ryots were no longer to be forced to cultivate bad land, at a ruinous loss, for the zemindar's behoof, the zemindar should be empowered to eject them from good land which they wished to keep as inheritance from their fathers. The Association conjured the Legislative Council of India to abstain from a measure fraught with such mischief as the ryot's deliverance from what the Editor of the *Hindoo Patriot* and others had termed "predial bondage." With playful logic the Association observed :—

Section XII gives the ryot the liberty of relinquishing his holding, whether held for years or in perpetuity, provided he gives to the zemindar timely notice of his intention; and if the zemindar refuse to accept or sign any notice so given, the Collector shall compel him to do so. Thus a ryot will have the freedom of violating his own engagement whenever he chooses to do so, but the zemindar must continue bound by the terms of his agreement. Your petitioners believe that rights must be reciprocal, or there can be no justice. When the ryot is readily invested with the right of relinquishing his lands, equity demands that the zemindar should have the privilege of ejecting his tenant, whether with or without engagement, when reasons for so doing exist. Your petitioners are, however, aware of the consequence which such a state of things will lead to, and they therefore recommend that no right fraught with such mischief be conceded to one party to the prejudice of the other.

The benevolent soul of Cornwallis longed to secure the fruits of their own industry for ryots "whose labours are the riches of the State." The creatures of his benevolence, catching the spirit of his zemindary settlement, and animated with a love of country and of ryots whom Lord Cornwallis had confided to their cherishing care, solemnly denounced the injustice and wrong of liberating ryots from the cruel

APP. XIX. bondage of *Huftum* and *Punjum*, and the predial slavery of unavailing *istafas*.

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Para. 13, contd.

III.—RYOTS HELD WITHOUT POTTAHS.

(a).—*Bengal British Indian Association (14th February 1859).*

(1). The earliest law on the subject of pottahs attached a heavy penalty to the withholding of pottahs by the zemindar. No case can, nevertheless, be cited as having ever been instituted by a ryot in enforcement of this privilege, thereby clearly indicating¹ the inutility of the rule, and the same not having been dictated by the requirements of the country.

(2). The ryot, except when money is to be laid out in the improvement of his holding, prefers cultivating and giving up land at his pleasure, and giving notice of his intention, before the season of cultivation, to being bound down to a certain spot for a fixed period by the terms of a kabuliut. He is also in the habit of varying the extent and locality of his cultivation; for as he never manures² the soil, he finds it profitable to abandon a spot which he has impoverished by cultivation, and take up another which has been invigorated by lying fallow or by the deposit of fresh soil; and in such cases he pays rent according to the quantity of land ascertained to be covered by his crops.³

(3). Hence the original law in reference to the exchange of pottahs and kabuliuts has never come into operation. * * It is not the fault of the zemindar that the earliest law on the subject has been rendered inoperative, and that fifteen-sixteenths of the tenures in Bengal are at present held without the interchange of pottahs and kabuliuts.

The Association forgot the facts in Appendix X, para. 7.

(b).—*Select Committee on Bill of Act X of 1859 (26th March 1859).*

Considering the very great extent to which the practice of cultivating without written engagements prevails, and the indisposition said to be shown by the ryots in many parts of the country to execute such engagements, we think that it will not be expedient to insist upon the existence of a kabuliut as a necessary condition to the exercise of the right of distraint.

(c).—*Mr. Justice W. Seton-Karr (2nd June 1864).*

(1). Leases for limited periods, between zemindar and ryot, for a distinct series of years, though common in parts of Behar for instance, are, in other parts of the country, somewhat unfamiliar to the peasantry; though ryots and under-tenants are in the habit of giving out their own rights to others of the same rank and position as themselves, on leases for limited terms.

(2). Between many zemindars and ryots there has been no interchange of pottahs and kabuliuts at all. The ryot may be found holding on, as

¹ Indicating, rather, the custom of the country by which resident cultivators could take up lands subject to payment of the ancient customary rate.

² See, however, Association's testimony in Appendix XVIII, para. 2.

³ This mode of payment, without previous settlement in a lease of the rate per beegah, implies the existence of well-known pergunnah rates.

his father did before him, under an implied contract that he would not be turned out so long as he paid his rent. APP. XI.

(3). When there has been such interchange, the ordinary form of pottah specifies no term of years whatever, unless it be where the rent is declared not liable to enhancement, and where the tenure is granted in perpetuity to be held from father to son. It is certain, too, that in the earlier decisions of the late Sudder Court, or until the last few years, a lease so awarded was held terminable only by the consent of both parties, and not at the option of the one or the other. And it is equally undeniable that, in the general belief of the united peasantry, all cultivators, except the merest tenants for a year or two, are believed to have a right to remain on their lands so long as they pay their rents, and are not liable to dispossession.

CONTINUAL
GROWTH OF
OCCUPANCY
RIGHTS.
—
Para. 14.

(d).—*Mr. Justice Sumbhoonath Pundit, Great Rent Case.*

Most of the ryots throughout Bengal hold without pottahs and have seldom given kabuliuts; yet the rents payable by them are known to the parties concerned, and are evident from papers produced when disputes arise.

(e).—*Mr. Justice Norman, Great Rent Case.*

(1). The khoddkashts were generally little disposed to comply with the law respecting pottahs. Their holdings were usually antecedent to written engagements, and they objected to any writing defining the amount of rent payable by them, from an apprehension that it might be regarded as derogating from their previous undoubted rights, and creating a new and less certain title.

(2). The combined effect of the several causes which have been referred to, and mainly the defective legislation of 1793, and the omission of all attempt to define the rights of the cultivators, together with the adverse tendency of subsequent legislation, was that the undoubted rights of the great mass of the cultivators to hold their lands exempt from arbitrary enhancement, and subject only to customary rates of rent, were nearly obliterated and lost. * *

14. These extracts respecting pottahs show that—

I. As under native rule before the decennial settlement, so in 1859, according to the testimony, among others, of the British Indian Association, the mass of the cultivators or ryots in Bengal held without pottahs, under a custom which protected them from disturbance in their possession so long as they paid the rent. This condition involved fixity of rent; for had it left open to the zemindar the power of raising the ryot's rent, the privilege of not being disturbed in possession while the ryot paid the rent would have been nugatory.

II. Except where a rate less than the customary rate was secured by special agreement, the rent which the ryots paid was not matter of contract or bargain. With the several millions of ryots concerned, contract rates were impossible without a record of them in pottahs, and for fifteen-sixteenths of those millions there were no pottahs.

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—
CONTINUAL
GROWTH OF
OCCUPANCY
RIGHTS.
—

Para. 14, contd.

III. As under native rule, so in 1859, the rent, not recorded in pottahs, which the millions of ryots paid, was the customary pergunnah rate. Under native rule, this rate was recorded in the registers of village accountants and canoongoes who were independent of the zemindar; in 1859, the record was in accounts under the control of the zemindar, and, thus far, the vitiated record was unsatisfactory, compared with that under native rule; but the binding force of custom in India, receipts for rent, and the happy circumstance that the exactions of zemindars down to 1859 were generally in the form of *abwabs* separate from the customary pergunnah rate, did afford to the ryot a security resembling somewhat that under native rule, though an imperfect security.

IV. In the ryotwar territories in the Madras and Bombay Presidencies, the Government, with all its resources and with its liberal allowance of land to village officers, is quite unequal to collecting rent from each ryot at an assessment varying each year. The work of collection is lightened, from the necessities of the case, by two rules—*1st*, the rate of assessment holds good for thirty years; *2nd*, the area of land cultivated by each ryot is not measured yearly, unless he demands a variation of the amount of his assessment for the particular year. The zemindars have not the same resources as the Government for keeping up liberal village establishments, while their desire for the largest possible net profit, through keeping down the strength and cost of village establishments, is stronger than that of a Government. Their interest and necessities, in respect of the cost of village establishments, coincided thus, until 1859, with the binding force of an immemorial custom, in preserving intact the ancient pergunnah rate, and levying *abwabs* in the form of percentages on that rate; for in this way only could the zemindar know the amount of his demand against each ryot, and maintain some check over his village gomash-tas for accounting to him for collections of the entire demands.

V. Thus, under I, the immemorial custom, more ancient than law, under which resident cultivators cultivated land in their villages without let or hindrance from the zemindar, and without a pottah from him, subject only to payment of the established pergunnah rate, continued down to 1859, on the unimpeachable testimony of the British Indian Association; while the feelings of the ryots, so tenacious of custom, especially of customs relating to land, and the interest of

the zemindar, coincided in preserving for the ryot the tradition, and for the zemindar the record, of the ancient established pergunnah rates.

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RIGHTS.

Para. 15.

VI. In other words, the three requisites for the growth of occupancy right,—*viz.*, an ancient custom not abrogated by law, the free occupation of land by resident cultivators subject to payment of customary rent, and the means of ascertaining what the ryot should pay according to custom, irrespective of leases which did not exist for fifteen-sixteenths of the cultivators,—all remained in force down to 1859.

VII. If the ancient pergunnah rate was vitiated in any measure by oppressions or exactions of the zemindar, in violation of the deed of that permanent zemindary settlement which constitutes the only charter of his rights, the wrong, if it be not turned by Nemesis to the zemindar's prejudice, should at least not redound to his advantage and to the ryot's detriment, by operating so as to vitiate the ryot's right of occupancy. All that the zemindar exacted by oppression, beyond the pergunnah rate which was expressly made binding on him by the Regulations of 1793, was illegal, and outside the cognizance of the Courts, unless for the punishment of the zemindar.

15. It is not surprising, therefore, that, as in Mr. Holt Mackenzie's time in 1830, so in 1857-58, the mass of the cultivating ryots in Bengal were khoodkashts. Thus:—

I.—Protestant Missionaries residing in or near Calcutta (9th March 1858).

The khoodkasht, Portrick, resident ryots of Bengal, constituting the most valuable and by far the largest portion of the peasantry, have now, in truth and justice, a tenure of a freehold nature, in which they are entitled to protection.

II.—Zemindars of 24-Pergunnahs (28th February 1857).

The tenures enumerated in what are called the exceptive clauses of Section XXVI of Act I of 1845, *viz.*:—

- (1).—Tenures which were held as *istemraree* or *mocurraree* at a fixed rent more than 12 years before the permanent settlement.
- (2).—Tenures existing at the time of the decennial settlement, which have not been, or may not be proved to be, liable to increase of assessment on the ground stated in section 51, Regulation VIII of 1793.
- (3).—Lands held by khoodkasht or kudeemee ryots having rights of occupancy at fixed rents, or at rents assessable according to fixed rates under the regulations in force

do not stand in need of such security, and these comprise the tenures by which the vast mass of cultivators hold the lands they cultivate; and almost all resident tenants hold the lands on which they reside.

APP. XIX. 16. The two great changes introduced by Act X of 1859 were in the status of the ryots, and in the maximum of rent payable by them, *viz.* :—

TWO GREAT
CHANGES UNDER
ACT X OF 1859.

Para. 16.

(1st). As to status: Until 1859, the cultivators were classed as resident and non-resident; since 1859, they have been classed as occupancy and non-occupancy ryots. This change of classification involved a real change of status, inasmuch as before 1859 a zemindar could not prevent the growth and maturity of occupancy rights in a resident cultivator; whereas since 1859 he, by preventing occupancy for more than twelve years at the same rent, has been able to check the growth of occupancy right.

(2nd). As to rate of rent: Until 1859, the pergunnah rate established by ancient custom limited the demand on the ryot; since 1859, an equitable rate of rent, to be determined on principles not fixed to this day, have unsettled the rights and the status of the ryot. The act was meant for the ryot's protection; but, with the usual devil's luck of zemindars, it is working to his undoing.

17. In both these particulars there has been a breach of the engagements at the permanent settlement, in which the faith of Government was as solemnly pledged to the ryot as to the zemindar; and perhaps this breach of faith has worked more injuriously through the alteration of the maximum of the rate of rent than through the direct alteration of the *status* or occupancy right of the ryot. For it was only too truly observed, in Mr. Secretary Grant's letter dated 10th February 1840, that "the right to enhance according to the present value of the land differs not in principle from absolute annulment" of the tenure.

18. Certainly these so great changes in the *status* and privileges of the ryot were not contemplated,—nay, the reverse of these changes was contemplated,—in the opening of the correspondence which resulted in 1859 in the passing of Acts X and XI of that year. The Bill relating to Act XI was introduced into the Legislative Council on 22nd December 1855; that relating to Act X on 10th October 1857. Among the reports elicited by the Bill dated 22nd December 1855, the only paper which discussed the *status* of ryots, and the rent payable by them was one by Mr. A. Sconce, Judge of the Sudder Dewanny Adawlut, dated 4th April 1857.

I.—AS TO STATUS OF RYOT.

(a). Who is a *khloodkasht* ryot? He is otherwise called a *kudeemee* ryot and a resident hereditary cultivator. In a general sense, as we all

know, a *khoodkasht* is contrasted with a *pykasht ryot*; the latter being only an occasional cultivator, and probably not a permanent resident on the lands of the village of which he is for the time designated a *ryot*. But a more explicit definition of the attributes peculiar to the position of a *khoodkasht ryot* seems to be essential when the tenure is the special subject of legislative enactment. It imports a permanent village residence, and a permanent occupancy of his "jote." The land possessed by the father passes by succession to his son. The land or jote of the *khoodkasht ryot* is not confounded, in the estimation of the villagers, with the land of his neighbour; it is the "property" of one man in particular, and is not common to the competition of all. Ordinarily, the *khoodkasht ryot* possesses a prescriptive occupancy, meaning not merely a long occupancy, but the successive occupancy of father and son.

APP. XIX.

TWO GREAT CHARGES UNDER ACT X OF 1859.

Para. 18, contd.

(b). But while we recognise hereditary cultivation to be a characteristic of the tenure, it does not seem necessary that, at the time to which we have advanced, the *ryot* should be able to carry up his possession and his pedigree to 1793. I apprehend that a *ryot* may possess a *khoodkasht* tenure now, though his grandfather may not have been a *khoodkasht ryot* at the time of the permanent settlement. Permanent residence may be taken to originate the tenure in the present day as in 1793; and prolonged occupancy to confirm what residence originated. "Long occupancy" is the expression of the best of all authorities—Mr. Shore.

(c). "By long occupancy," wrote Mr. Shore in 1789, "*ryots* acquire a right of possession in the soil." I would change the uncertain for the certain, and instead of "long" I would substitute such a definite term as to the wisdom of the legislature may appear to establish a right of occupancy. For example, excepting *ryots* whose leases covenanted or implied removal at the termination of the period specified therein, I would take twelve years' occupancy to be the occupancy of a *khoodkasht ryot*, and I would enact that a sale-purchaser should not be competent to enhance the rates of a *khoodkasht ryot's* rent unless upon proof of fraud, or upon proof that, within three years before the year of sale, the rates had been lowered below the rates of the same village; and that he should not be competent to re-assess the entire land possessed by the *ryot* if it should be proved that the *ryot* held the land under definite engagement for twelve years, and an abatement of assessment had not been made within three years before the year of sale.

This account agrees, as regards the maturing of *pykasht* into *khoodkasht* right of occupancy with that in para. 14, sections V and VI of this Appendix; but as regards the resident cultivator, whose ancestors belonged to the village while he, or not a remote ancestor, reclaimed his land from waste, subject to the payment of only the established *pergunnah* rate, the account derogates from the real right of such a cultivator, by making its recognition contingent on twelve years' occupancy under a definite engagement;—that condition was applicable only to the *pykasht ryot*. The legislature, in passing Act X of 1859, substantially adopted Mr. Scence's

APP. XIX. view, but in doing so they injured the resident cultivator, while they benefited the non-resident or pykasht ryot.

TWO GREAT
CHARGES UNDER
ACT X OF 1859.

Para. 18, contd.

II.—AS TO RENT.

(a). First I will consider the bearing of our laws as regards the quantum of rent demandable from a resident hereditary cultivator. This Bill, like Act I of 1845, indicates that this question is determinable by certain unspecified regulations now in force. One of the most significant provisions made on this subject is that conveyed in section V, Regulation XLIV of 1793, which, in case a zemindar should "grant a pottah for the cultivation of land at a reduced rent," declared that a subsequent purchaser "should be at liberty to collect whatever the former zemindars would have been entitled to demand according to the established usages and rates of the pergunnah or district."

(b). Here no distinction is taken between a resident ryot and a ryot whose interest in the land is limited to his lease. But at any rate it should be observed that the direct object of the law was to enable a new proprietor to correct unfair assessments, and not to interdict leases at fair rents.

Mr. Sconce erred in speaking of "fair rents," instead of "established pergunnah rates," as the maximum rent allowed by the Regulations of 1793; those regulations dealt with ryots' rents as ascertained or determinable, and unalterable facts (Appendix XVI, paras. 17 and 18); the expression "fair rents" was applicable, under those regulations, only to the rents of dependent talukdars and certain other middlemen between zemindar and ryots. Mr. Sconce erred further in speaking of "leases" at such fair rents, in the ordinary acceptance of the term "leases"; the Regulations of 1793 interdicted, it is true, the granting of pottahs for more than ten years, but the pottahs of those regulations were a mere record of the amount of rent payable by the ryot; they were not the document from which he derived his right to hold the land. Accordingly, when in 1793 the legislature desired to prevent a zemindar from giving land to a ryot at less than the pergunnah rate, there was reason (though, as the event proved, there was not wisdom) in the limitation of the currency of the pottah, as evidence of the proper rent payable by the ryot, to ten years; his right of occupancy was respected by the rider to the ten years' limit of pottah, namely, that the zemindar was bound to renew the pottah at the end of that period for the established customary rate of the pergunnah.

(c). The principle here announced (b) is entirely conformable with the provisions of sections 54 and 55, Regulation VIII of 1793, which determined both that the various items previously paid by ryots as rent should be consolidated into one specific sum, and that no new item should be

imposed under any pretence whatever. Such was the principle of our **APP. XIX.** primary laws. At the time that the sudder jumma payable by proprietors was fixed for ever, a somewhat similar announcement was made of the expectation of the legislature that the rents of ryots should not remain undetermined; that it was possible to ascertain and express in one sum the rent thus paid or fairly leviable; and that rents unfairly assessed should be susceptible of re-adjustment.

—
TWO GREAT
CHARGES UNDER
ACT X OF 1859.
—
Para. 18, contd.

(d). These rules applied generally to all ryots; and with respect to khoodkasht ryots in particular, it was provided (clause 2, section 60, Regulation VIII of 1793) that their rents should not be enhanced *except upon proof* that they had been settled by collusion; or that the payments made by them within the previous three years had been below the pergunnah rates; or (an alternative which applied specially at the time of the permanent settlement) upon a general measurement of the pergunnahs for the purpose of equalising and correcting the assessment.

Mr. Sconce missed the reason why the khoodkasht ryots were specially protected from enhancement. The rents which khoodkashts paid formed and determined, in fact, the pergunnah rate; the pykasht ryots of 1793, when land was waste, and cultivators were few, paid less than the pergunnah rate.

(e). From the section last quoted (60, Regulation VIII of 1793), two fundamental rules of unspeakable moment seem to be deducible. The first is, that when a question arises between a zemindar and a khoodkasht ryot as to the enhancement of the ryot's rent, *the onus of proving the issue rests with the zemindar*. It is not competent to the zemindar to require the ryot to pay the demanded rent, unless he shall prove his right to pay a lower rate; on the contrary, by this law, the *status quo* of the ryot is accepted, and the zemindar who chooses to demand an increased rent is bound to prove, not for any reasons which he may apply to this ryot in common with all the ryots of his estate, but for the very reasons set forth in this section, that his claim is just. The second principle to which I have referred embraces the *ground* of the zemindar's action. Putting aside cases of fraud, *the zemindar must be prepared to show that within three years the ryots' rents have been reduced below the pergunnah rates*. I suppose that these words are to be interpreted as describing a recent reduction; and that it is by no means open to the zemindar to extend the time of the asserted reduction to six years or to twelve years; to declare that the rent paid uniformly for twelve years is an illegitimate assessment, and to demand an increase. Clearly it is the meaning of the law that uniformity of payment for more than three years becomes a fixed rate, not open to revision. If the reduction to which the zemindar might object had not been purposely limited to three years, the law would not have specified three years; and the period of three years being specified, a uniform payment for twelve years, or for any further period, necessarily protects the khoodkasht ryot against a claim for enhancement which the zemindar may bring against him.

(f). Such is the peculiar constitution of the khoodkasht ryot's tenure, which the legislature defined and announced at the same time that it

APP. XIX. fixed for ever the revenue payable by zemindars; and it should now be considered in what manner the rights so legalised are affected by the law simultaneously passed to provide for the re-adjustment of rents on a sale of an estate being made for arrears of revenue. This law, as already said, is Regulation XLIV of 1793, whereby the purchaser is declared entitled to collect *whatever the former proprietor might have legally demanded according to established usages and rates*. Here no express distinction is taken between khoodkasht ryots and other ryots; but obviously the new proprietor is vested with no larger right than the old proprietor; and what were the obligations of the old proprietor and the rights of the khoodkhasht ryot under the provisions of clause 3, section 60, Regulation VIII of 1793, I have just described.

TWO GREAT
CHARGES UNDER
ACT X OF 1859.

Para. 18, contd.

In this account (*e* and *f* of preceding extracts) Mr. Sconce was not sufficiently guarded against a tacit admission that the established pergunnah rate, though established by custom, and though fixed in money throughout Bengal, was yet susceptible of increase for all the ryots of a pergunnah, though it could not be increased against any one of them individually, and though the Regulations of 1793 put an end to the only form in which the pergunnah rate was occasionally increased under native rule, on account of a rise of prices, *viz.*, by the imposition of fresh *abwabs*, thenceforward prohibited by the Regulations of 1793. Mr. Sconce's language was also unguarded, in that it seems to imply an opinion that the Sale Laws affected the status and privileges of all the ryots throughout Bengal, and not merely of those ryots, on only the particular estates sold for arrears of revenue, against whom, within a reasonable period after the auction-purchaser's acquisition of the estate, he established that they were holding at rates less than the established pergunnah rates of 1793.

(g). * * Undoubtedly there is no topic of which the unreserved consideration is more essential than this—whether the legislature adopts, and, if it adopts, in what sense it interprets, clause 2, section 60, Regulation VIII of 1793 (quoted in extract *d*).

We offend utterly against the broadest and deepest justice, and, considering the character and operation of the permanent settlement, I will even say against our constitutional law, if we depreciate and sink out of sight the rights and prosperity of resident cultivators, and elevate at their expense mere middlemen invested with power to absorb as increasing rent whatever substantial profit the land and labour of the ryot and improving markets may in the progress of time yield. It cannot be our deliberate purpose that the jumma of everybody should be fixed but the jumma of the khoodkasht ryot; that the sudder jumma should be perpetually unalterable, and so the jumma of a talukdar and the jumma of one or more in succession to him; and yet that, season by season, like a ripe fruit, the ryot should be pecked at till the stone be bared.

19. Mr. Sconce went to the root of the matter, but no one followed him ; other officials contented themselves with running comments on the Bill, and with ventilating their ideas of a fair rent for lands whereon dwelling-houses, manufactories, or other permanent buildings, have been erected, or whereon gardens, plantations, tanks, &c., have been made. The Select Committee on the Bill said nothing on the subject of ryot's rent, neither did the subject elicit any discussion in the Legislative Council ; and,—with this so little thought on a matter of the first importance to ryots,—the laws of 1793, and in later regulations, which had exempted ryots from enhancement of their rents beyond the pergunnah rates, as established in 1793 by custom, were put aside, and ryots were subjected to enhancement by an auction-purchaser, “under any law for the time being in force for the enhancement of the rent of such tenures.” This new phraseology, for which there is no warrant in the Regulations of 1793, was adopted for dove-tailing this provision in section 36 of the Sale Act XI of 1859, into the sections of Rent Act X of 1859, which, by violent innovations on the laws of 1793, and consequent infringement of the rights of the ryots, provided for a general enhancement of rents by zemindars, almost whensoever it might please them.

APP. XIX.
TWO GREAT
CHARGES UNDER
ACT X OF 1859.
Para 30.

20. The correspondence which led to Act X of 1859 began in 1855, with the expression of a profound sympathy for miserable ryots, and the Act was passed amid self-complacent gratulations on the good work accomplished by Government. Thus—

I. Lieutenant-Governor's minute of 5th March 1855 quoted, with approval, the following testimony of a district officer:—

The curse of this district is the insecure nature of the ryot's land tenure. The cultivator, though nominally protected by regulations of all sorts, has practically no rights in the soil. His rent is continually raised ; he is oppressed and worried by every successive teekadar, until he is actually forced out of his holding, and driven to take shelter in the Nepaul Teraie. A list of all the ryots who have abandoned their villages on account of the oppression of the teekadars within the last ten years would be a suggestive document.

II. MR. SCONCE was delighted—

The subject proposed for discussion and enactment in the third and immediately succeeding sections of this Bill is the most important that ever was, or, I may say, that can be, submitted for the consideration of the legislature. These sections present to us the first substantial attempt

APP. XXI. to redeem the pledge undertaken by the Government in clause 1, section 8, Regulation XVII of 1793, "to protect those classes of the people who from their situation are most helpless, and to enact laws necessary for the protection and welfare of ryots and other cultivators of the soil.

TWO GREAT
CHARGES UNDER
ACT X OF 1859.

Para 20, contd.

III. MR. H. RICKETTS in the Legislative Council (16th April 1859).

Setting aside those sections which had led to a difference of opinion (for a moment let them be forgotten), they would all agree that the work upon the whole was a right good work. The Bill, if passed, would benefit all those who in this country were connected with the land; that is, it would benefit about thirty millions of people. That was a pleasant thought for the Honourable Member to put under his pillow and go to sleep upon in a snug little room in the old country. * * No brass, nothing of that sort, would commemorate his career here; but should this Bill pass, he believed that Currie's Act would, for long years to come, as long as we collected land revenue till Bengal was sold, be a lasting memorial that, as in earlier days so to the very last, he worked on with success, and with that right honest spirit which had characterised his whole career as a servant of this Government.

III. And Lord Canning observed—

No one doubts that it has long been desirable that the important questions connected with the relative rights of landlord and tenant dealt with in this Bill should be settled; no objection is suggested to the nature of the settlement which the Bill contemplates; and the Bill is a real and earnest endeavour to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence which they have not hitherto enjoyed, by clearly defining their rights, and by placing restrictions on the power of the zemindars, such as ought long since to have been provided. * *

I beg leave to add the expression of my opinion that the author of the measure, Mr. Currie, has established a lasting claim to the gratitude of the cultivators of the soil in Bengal, and to the acknowledgments of all who are interested in their well-being.

21. Yet a Bill passed thus by the legislature amid a chorus of self-gratulation at its own benevolence, and as the *Magna Charta* of the ryots of Bengal, appears to have destroyed the rights of by far the most numerous, important, and valuable class of that peasantry. In the abolition of *Huf-tum* and *Punjum* the Act wrought unmixed good; but in its new principle of enhancement of rent, it introduced unmixed evil; mainly because the legislature did not distinguish between things that differ, but confounded the rights of occupancy ryots in permanently settled Bengal with the essentially distinct and inferior rights of the occupancy ryots in the temporarily settled North-Western Provinces.

22. The rapid stride, taken in so short a period as the interval between 10th October 1857, the date of Mr. Currie's

New rule of
enhancement of
rent.

Statement of Objects and Reasons of the Bill for recovery of rents, and the 26th March 1859, the date of the Bill as amended by the Select Committee, may be seen from the following provisions at those dates, and in the Regulations of 1793, respecting the maximum rate of rent recoverable from a ryot:—

APP. XIX.
NEW RULE OF
ENHANCEMENT
OF RENT.
Para. 22, contd.

I.—REGULATIONS OF 1793.

The pergunnah rate established according to custom.

II.—STATEMENT OF OBJECTS AND REASONS (10th October 1857).

(a). The regulations declare that ryots are entitled to receive pottahs for the lands cultivated by them, and to have their rates of rent adjusted on certain defined principles.

(For the defined principles, see Appendix, XVIII, para. 23; or the Regulations of 1812, which the Bill proposed to rescind.)

They also prescribe penalties for the exaction of any excess above the legal rate of rent, or of any unauthorised cess. Further, they recognise the right of all resident ryots to the occupancy of the lands cultivated by them, so long as they pay the established rent.

(b). I have thought it right to re-enact in a concise and distinct form the provisions of the present law relating to the rights of ryots with respect to the delivery of pottahs, the adjustment of rates of rent, and the occupancy of land, and to the prevention of illegal exaction and extortion in connection with demands for rent.

III.—BILL AS READ A FIRST TIME ON 10TH OCTOBER 1857.

(a).—Section III.

Hereditary ryots holding lands at *fixed rates of rent* are entitled to receive pottahs at those rates. All other ryots and cultivators of land are entitled to receive pottahs according to the rates of rent *for the¹ time being* established in the pergunnah in which the land is situate for land of the same description and quality, or, if there be no known and recognised pergunnah rates, according to the customary rates payable for land of a similar description in the places adjacent.

The above rules are applicable, not only to the first grant of pottahs, but also to the renewal (where right of renewal exists) of pottahs which may expire, or which may become cancelled in consequence of the sale of the tenure or estate in which the land is situate for arrears of rent or revenue.

(b).—Section IV.

Every resident ryot and cultivator has a right of occupancy in the land held or cultivated by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same. [But this rule does not apply to khainar, neejjote, or seer land belonging to the proprietor of the estate or tenure, and leased for a term or year by

¹ A new expression; not to be found in previous regulations.

APP. XIX. year to a resident cultivator, nor (as respects the actual cultivator) to lands sublet to a resident cultivator by a ryot having a right of occupancy.]

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ENHANCEMENT
OF RENT.

Para. 22, contd.

IV.—BILL AS AMENDED BY SELECT COMMITTEE ON 26TH MARCH 1859
AND PASSED INTO LAW.

(a).—*Section III.*

Ryots who, in the provinces of Bengal, Behar, Orissa, and Benares, hold lands at fixed rates of rent, which have not been changed from the time of the permanent settlement, are entitled to receive pottahs at such rates.

(b).—*Section IV.*

Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in the said provinces, has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

(c).—*Section V.*

Ryots having rights of occupancy, but not holding at fixed rates, as described in the two preceding sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

(d).—*Section VIII.*

Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom rent is payable.

(e).—*Section XVII.*

No ryot having a right of occupancy shall be liable to an enhancement of the rate of rent previously paid by him, except on some one of the following grounds, namely:—

1st.—That the rate of rent paid by such ryot is below the prevailing rate payable by ryots of the same class for land of a similar description and with similar advantages in the places adjacent.

2nd.—That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

3rd.—That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

(f).—*Section XVIII.*

Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise; or if the value of the

produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot; or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

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NEW RULES OF
ENHANCEMENT
OF RENT.

Para. 24.

23. There is material difference between the rule of rent in the Regulations of 1793 and in the account of rules existent in 1857, as given in the Statement of Objects and Reasons; but the difference between the latter and the rules as passed into law in 1859 is wider, and the departure from the Regulations of 1793 was serious.

24. The only material discussions of the statement of existing rule which occur in the papers relating to Act X of 1859, and in the discussions in the Legislative Council on the Bill, are contained in the following extracts:—

I.—MR. A. SCONCE (19th May 1858).

(a). I would hold to the principle deducible from the rule inculcated in 1793. In Regulation VIII of that year zemindars were told how they were to deal with their khodkasht ryots. The spirit of the permanent adjustment of the public revenue pervaded the legal relations of zemindars and tenants. The permanent settlement was not one-sided—permanent for the landlord, and not permanent for the tenant. On the contrary, the *de facto* positions of the tenants were accepted as representatives of the available assets of estates, upon which, except for special cause, zemindars could not legally encroach. In support of this statement, it is scarcely necessary that I should refer to sections 51 and 60, Regulation VIII, 1793. But the thorough recognition of the then purpose of the legislature is of immense importance, and the quotation of a familiar law may be pardoned. * *

(b). The rule with respect to khodkasht¹ ryots was that, except on proof of fraud, no increase should be demanded contrary to previous engagements, *unless it was shown that the rents paid within the three years preceding the settlement* had been reduced below the ordinary pergunnah rate. Here what is remarkable is that enhancement depended upon the reduction having been made within *the last three years*. If the rent of the ryot had been levied at a uniform rent for more than three years, the assessment could not be revised. This law seems to me to furnish the best authority for determining the fixity of rents. The rule has been in force from 1793 downwards;—supposing a khodkasht ryot to have paid his rent for six years, the plea that the rate chargeable on him was too low, could not be heard. In 1793 he was secured by this law, and the law cannot be less a protector to the ryot now. In 1793 the rule was that the assessment of land held under a prescriptive right of occupancy, might be revised on proof that within three years the rent had been reduced below current rates; and the principle to which practical effect was thus given appears to be necessarily based on the admis-

¹ Mr. Sconce erred in supposing that this rule referred to the mass of khodkasht ryots; it referred to the exceptionally few who paid less than the pergunnah rates.

APP. XIX. sion that *the payment of a uniform rent for more than three years* established a prescriptive right to the continuance of that payment in future years.

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ENHANCEMENT
OF RENT.

Para. 24, contd.

(c). (1). And further, I conceive that the constitutional theory of the permanent settlement did effectually embody permanence of assessment to the tenant as well as to the zemindar. This truth is too precious to be let slip. It applies to other tenants as well as to prescriptive occupants of land; but it applies also to these. The existence of the tenancy of land, distinct from that of a tenant-at-will, or of a temporary leaseholder, entered into the definitive bases of the settlement. The rent assets derivable from these permanent tenures were the fixed assets of the settlement by which the sudder jumma of each estate was regulated; and, except upon special cause shown, it was incompetent to zemindars to enhance the rent then leviable. The contract on the part of the State enforced a contract on the part of the zemindar. One portion of the rents of an estate was assumed to be a fixed (though unknown) sum, and the limitation of the demand of the State carried with it the stipulation that the rent payable by this particular class of tenants should be adhered to by the zemindar.

(d). The tenancy of an estate at the time of the permanent settlement was, as it is now, divisible into three broad classes—

1st may be enumerated the class described as dependent taluks.

The tenures included in this general classification are very variously designated, according to the local nomenclature prevalent in each district; but the nature of the tenure in all cases imports a hereditary occupancy at a definite rent;

2nd is the more subordinate class, that may or may not be included in the first, the jotes of ryots holding under a prescriptive occupancy; and

3rd, ryots or other tenants that held only for a time.

(e). As to the first class (in d), zemindars were declared to have no general right of enhancement. The rent then payable by the tenant was accepted as his ultimate liability. By the special and very limited conditions defined in section 51, Regulation VIII, 1793, a zemindar might show cause for raising his demand; but without such special cause the tenure of the tenant was unassailable. The same right is carried down to our day by section 26, Act I of 1845, and again by section 60, Regulation VIII, 1793, as by Act I of 1845 the *existent* rights of the second class are equally respected.

(2) It is for these reasons, I say, that the sudder jumma of the zemindar is not a constantly fixed, and the rent of the tenant a constantly increasing, quantity. Both by law are fixed; and it seems to me it should be our most earnest duty to give effect to the spirit of the law.

(f). There can be no difficulty as to the rent of a jotedar holding land under a prescriptive occupancy from 1793 downwards. I do not speak only of the rate, but of the amount of rent. Rent so long paid cannot, in the spirit of the law, be open to enhancement. * * As to prescriptive rights of occupancy of a more recent origin, it seems to me that, whatever difficulty as to the right of assessment may be presented, should be solved by law, and not left to the unguided judgment of the

courts. I would propose to declare that a ryot holding land under a prescriptive right of occupancy, who shall have uniformly paid with or without a pottah a definite amount of rent, shall not be liable to a demand for enhancement. Resident—permanently occupying—ryots are not beholden to zemindars for their rights. If upon any point we are competent to exert the sacred force of common law in this country, it is this—labour and occupancy make the right of the prescriptive ryot. By Regulation VIII, 1793, the revision of a prescriptive jotedar's assessment was limited to reduction effected within three years only; for later titles I propose twelve years.

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ENHANCEMENT
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Para. 24, contd.

II.—MR. H. T. RAIKES (*17th June 1858*).

(a). (In a passage quoted in Appendix XVIII, para. 28 & III, where the fallacy in that passage is exposed, Mr. Raikes stated that, under the law as then existing, auction-purchasers were entitled to raise the rents of ryots at discretion.)

(b). The right which auction-purchasers have been held to acquire under those laws is the right to raise the rents of the cultivators, open to enhancement, by *competition*; and it is obvious that if rates are determinable by a particular standard only (as proposed in section 3 of the Bill), when that standard is once reached, enhancement is illegal, and the power to raise the rent by competition rates no longer exists.

(But this is exactly what the Regulations of 1793 contemplated; see Appendix XVI, paras. 24 to 26.)

An auction-purchaser, therefore, acquiring an estate in which the rents have been already regulated on the principle of the Bill, could neither enhance at discretion nor eject, and must content himself with the rents paid to his predecessor.

Evidently Mr. Raikes, in his zeal for the auction-purchaser, forgot the principle on which any power of enhancement was conferred by the Sale Law, *viz.*, that of putting the auction-purchaser in the place of the original engager in 1793;—when the rents of the ryots were already raised to the standard pergunnah rates, there was no conceivable ground for honest pretensions to the power of yet further enhancement.

(c). My own opinion is, that the principle of the *present* law should not be changed after so many years' continuance. The zemindar, as constituted by the perpetual settlement, is the party entitled to derive benefit from any rise in the value of land consequent on the increase in the price of landed products.

(Not so; see Appendix XVI, para. 28.)

This he cannot receive if rates are not liable to increase, while a permanent fall in the value of productions must compel him to *lower* the rates, or his land will be thrown out of cultivation. To make the ryot's tenure permanent and his rent *fixed* is to aggrandise the ryot at

APP. XIX. the expense of the zemindar, and is totally opposed to the *system* which recent legislation, through the Sale Laws, has introduced into most zemindaries in Bengal.

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ENHANCEMENT
OF RENT.

Para. 24, contd.

And so Mr. Raikes held that a Sale Law which had existed for only sixteen years, and under which but few estates had been sold for arrears of revenue, introduced a new system of enhancement of rent into most zemindaries in Bengal.

25. In the proceedings in the Legislative Council there was no examination of the rule of rent to which the ryot was entitled under the Regulations of 1793; even the statements of rule in the preceding extracts were not discussed. Clearly, no one, except Mr. Sconce, cared to examine what rule of rent was assured to the ryot under the settlement of 1793. Everybody, as will be presently seen, discussed the subject of rent (the one all-important matter for the ryot) as if the rule of rent should be what seemed good in each gentleman's own eyes, without reference to the obligations to which the faith of Government was as solemnly pledged to the ryot as to the zemindar in the settlement of 1793. There were notions that the illegal exactions of zemindars, and Sale Laws of limited operation,—and of still more limited effect and scope in the comparatively few zemindaries in which the Sale Laws, at least of 1841 and 1845, did operate,—had left the ryot's rent at the mercy of the zemindar: it did not occur to those gentlemen that if the pergunnah rate mentioned in the deed of the zemindary settlement was obliterated, the deed was broken, and that zemindars who had infringed the deed should not have been allowed to profit by their own wrong.

26. The following extracts contain all the material comments which Mr. Currie's Bill elicited respecting the definition, for the future, of the rates of rent properly leviable from ryots.

I.—ZEMINDARS RESIDING IN DACCA (5th June 1858).

Your petitioners beg to represent that the difficulties under which they lie are such as they ought not to be compelled to encounter. Your Honourable Council must be well aware that the prices of produce of all descriptions have been steadily rising for many years, till at the present period they may be said to quadruple the amount they were twelve to fifteen years ago. The profits of this advance in prices have, during that whole period, fallen exclusively to the share of the cultivator, without any participation on the part of your petitioners, who, for anything that is discoverable, ought to reserve their portion of those profits, since it is obvious that they increase the value of the lands from which they are derived.

(2). Your petitioners claim their quota of the profits alluded to on APP. XIX the plainest principles of reasoning

(not so very plain, perhaps; see Appendix XVI, para. 28);

while those who draw their maintenance from sources of skilled or unskilled labour, are free to advance the remuneration for their time and toil

(the zemindars have done nothing, the ryots everything, for the improvement of cultivation),

so as to bear some proportion to the prices of the necessaries and conveniences of life; the landholder alone is, by means of such legislation, tied down to an income that cannot be increased to meet the emergency described, and is by this means unjustly reduced to a state of unnatural degradation; his source of income being rendered destitute of that elasticity which would accommodate it to the circumstances of the times; and by this means the rights of your petitioners will be actually deteriorated by the Bill.

Petitioners forgot an important part of their income, *viz.*, that from waste lands brought into cultivation since 1793, on which they paid no rent.

II.—SIR F. J. HALLIDAY (27th November 1858).

Mr. Sconce further proposes to declare the actual rent of ryots with a prescriptive right of occupancy perpetual. But as to this I hesitate, believing it better to leave this to be determined by the new Rent Courts, as it now is in suits in the ordinary courts for what is termed *kohust-i-jumma*.

III.—N. W. PROVINCES.—BOARD OF REVENUE (JUNIOR MEMBER, MR. W. MUIR),—14th December 1858.

(a). I agree with Mr. Currie in that part of the observations contained in his memorandum which impugns Section III. The only standard given for fixing disputed rents at, is the old one of *pergunnah* rates, or customary rates payable for similar adjacent land.

(b). This subject is discussed in paragraphs 134-7 of the "Directions to Settlement Officers." Mr. Thomason there remarks that "both these rules" (that is, *pergunnah* and *adjacent* rates) "are of difficult application." Rent is not a thing to be reduced to any such hard and uniform rule as this. The capacities and advantages of adjacent fields of apparently similar soil may greatly differ. Proximity to a market, or facility of procuring manure, retentiveness of moisture, opening out of new roads, supply of new means of irrigation, are specimens of the natural as well as artificial causes which render it impossible to fix arbitrarily the rent of land by the standard proposed, and which may frequently cause the value of the same land to vary at different times. The caste and habits of the cultivators are also elements which cannot be overlooked.

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OF RENT.

Para. 26, contd

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OF RENT.

Para. 26, contd.

All this may be very true; but most of these difficulties are the creation of European settlement officers, who, in enhancing the rents of zemindars or of a village, had to distribute this enhanced rent among the ryots in the record of rights. Under native rule, the pergunnah rates in the North-Western Provinces, though not the same in any two villages, yet were readily distinguishable by the natives of each village. (See Appendix V, para. 2, section V.) Sir William Muir's enumeration of difficulties which arose out of the enhancement of the Government demand upon the zemindar or village, and from the consequences to ryots of that enhancement, in the temporarily settled North-Western Provinces, only shows the irrelevancy of his remarks to the rates assessable upon ryots in permanently settled Bengal.

(c). The proprietor should have the right of trying these points: (1) whether the rent which any cultivator having the right of occupancy has been paying is a fair and adequate rent; (2) and further, whether, admitting the rent to have been formerly fair, circumstances have not since arisen to justify an enhancement. And the cultivator having a right of occupancy should (3) also possess the power of suing to determine whether circumstances have not arisen to deteriorate the value of his tenure, and justify him in demanding a reduction on the prescriptive rent.

These three points arise manifestly out of the enhancement of the zemindar's assessment, and from the consequent enhancement, or liability to enhancement, of the ryot's rent. Where the zemindars' rent is raised in proportion to a rise of prices, perforce the ryots' rents must be raised in the same proportion to enable the zemindar to pay his new rent. This consideration alone warrants the enquiry on points (1) and (2); there is nothing respecting them in the regulations of the permanent settlement which, in fixing the zemindar's rent for ever, and in limiting his demand upon his ryots to the pergunnah rates of 1793, consistently withheld from him the power of enhancing any rent beyond those pergunnah rates. The third point, too,—*viz.*, the ryot's title to abatement of his rent on account of any deterioration of his land,—implies also some previous enhancement of his rent. In the permanently settled provinces of Bengal no ryot, paying the pergunnah rate of 1793, could expect abatement of his rent on account of deterioration of his land, unless the zemindar obtained from Government an abatement of his jumma from the same cause.

IV.—N. W. PROVINCES.—MR. CHARLES CURRIE.

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The disquisitions of this gentleman need not be quoted at any length. He was possessed with an idea that English landlords regulated their farmers' rents by Malthus' theory of rent; and he held advanced views to the effect that zemindars and ryots might be left to settle rents as best they may.

NEW RULE OF
ENHANCEMENT
OF RENT.

Para. 24, contd.

(a). Advantage should be taken of the occasion to review the whole subject connected with rent of land, and carefully to consider whether the regulations are capable of being modified or altered, not merely in word, but in principle, * * the true principles of political economy

(that is to say, the rights of ryots under the law of 1793 were to be set aside and be replaced by others drawn from Mr. Currie's intuitional consciousness).

(b). The system of arbitrarily determining the amount of rent to be paid by tenants is contrary to the true principles of political economy, and should not be adhered to longer than is absolutely necessary. The necessity no longer exists. * * The country may be said to have obtained (attained) a natural state, and there appears no necessity for a deviation from the acknowledged principles of political economy.

And then followed a scrap of political economy which was beside the question of ryots' rights, but which sank deep into the mind of Sir Barnes Peacock, viz., "rent is the surplus profits of land after deducting the wages of labour and the interest of capital expended on the land." The only rent contemplated by the authors of the zemindary settlement was not rent.

V.—BENGAL BOARD OF REVENUE (1st December 1859).

Section III.—To the first four lines of this section the Board have no objection to offer. But they (Messrs. Dampier and Stainforth) object decidedly to any attempt on the part of Government to interfere with the market price of land, and to compel the zemindar to grant pottahs at the pergunnah rate. In practice, perhaps, in the greater portion of Bengal, this section would be a dead letter, as there is no such thing as a generally recognised pergunnah rate. But the Board are of opinion that the proposed interference is very objectionable, and they recommend the cancellation of the section from line 5 *ad finem*.

VI.—MR. C. STEER, CAMP CHITTAGONG (27th August 1858).

(a). If a resident ryot has a right of occupancy so long as he pays the rent demandable, if he is entitled to demand a pottah, and that pottah he is entitled to claim at pergunnah rates, those rates, as they prevail at present, will be the rates always. I am altogether unable to see how, except in very few and exceptional cases, a zemindar can manage to raise his pergunnah rates.

APP. XIX. This precisely was the letter and intent of the Regulations of 1793 (Appendix XVI, paragraphs 16 and 24 to 28); but Mr. Steer forgot this, and proceeded to remark—

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ENHANCEMENT
OF RENT.

Para. 26, contd.

(b). Of course, if the principle of extending to the landlord any share in the growing prosperity of his estate is a bad one, then let the Bill pass; but if that is not the case, there should be some means provided for the regulation of the pergunnah rates from time to time. The Collectors might be empowered to do this, say every five years.

Mr. Steer overlooked (1) that in the Madras and Bombay Presidencies the ryot has the advantage of an assessment which is fixed for 30 years—not for five years; (2) the zemindars obtained their permanent settlement under the belief cherished by Lord Cornwallis, that a rent fixed not for five years but for ever, was required to stimulate cultivation, which, since 1793, has been extended by the ryot—not by the zemindar.

VII.—BRITISH INDIAN ASSOCIATION (*14th February 1859*).

(a). Every one at all conversant with the land revenue of the country must be well aware that the rates at which the different lands in close contiguity to each other are held vary considerably. A zemindar, alive to his own interests, may have revised the assessment according to the capabilities of the land for the time being, taking into consideration all the circumstances which should regulate the rate of land

(the Association assumed the legality of any such revision which had the effect of raising the previous pergunnah rates; but clearly it was illegal,—see Appendix XVI, paras. 16 and 24 to 28);

whilst another, regardless of his legitimate rights, may have continued the same rates which prevailed some fifty years since, when some parts even of Calcutta were the abode of tigers. What is to guide the Judge in the determination of the rate? The zemindar, in support of his claim, will cite the highest rates obtaining for similar lands adjacent to his, and the ryot the lowest. If the Judge be favourable to the zemindar, he will adopt his evidence; if otherwise, that of the ryot

(this was disrespectful to the Courts; but the Association generally writes a humble petition):

or he may form his own opinion from the numerical strength of the testimony produced on either side.

(b). If your Honourable Council wish to adopt a practical instead of an imaginary standard, in cases where the rent is assessable under a fixed rule, your petitioners would suggest the adoption of a certain proportion of the gross produce as the rent exigible from cultivators. Rent, it is admitted, is a portion of the produce yielded as an equivalent for use and occupation of the soil. What is the portion of the produce to be considered as rent? According to the customs of the country from

time immemorial, it is one-half, as determined by Lord William Bentinck in his celebrated circular on resumption and assessment, after mature consideration of all the authorities on the point. Your petitioners believe that your Honourable Council will admit that those to whom the proprietary right in the soil is adjudged are entitled at all times to receive such portion of the produce; and that, in estimating the money value thereof, even the most inexperienced judges cannot err, the points of enquiry being reduced to the quantity and description of the crop which the land sought to be assessed annually yields, and the market value for the time being of the same.

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OF RENT.

Para. 27.

The Association had touchingly alluded to the pain with which they confined themselves to advocating the cause of landholders. Their agony in delivering extract VII b, so deadly to ryots' interests, was intense,—only, however, from the members of the Association having forgotten their rent-rolls; which must show that in no case can the zemindar in reason expect from any ryot anything like half the produce, if he exacts a money rent.

VIII.—SELECT COMMITTEE (26th March 1859).

Section V.—The original Bill, following the phraseology of the existing law, declared ryots not holding at fixed rents entitled to pottahs at pergunnah rates. This expression has been objected to, on the ground that there are really no known pergunnah rates. The recognition of a right of occupancy in the ryot implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right. There was a discussion on this subject between the Government of the North-Western Provinces, the Sudder Court, and the Board of Revenue, and it was then apparently admitted that it was the acknowledged right of the ryot to hold at "*customary and fair*" rates." We have adopted similar phrases, and in this section and Sections XVII and XVIII have endeavoured to lay down rules by which the "fairness" of the rates may be ascertained.

27. Thus the papers relating to Mr. Currie's Rent Bill show that, in defining the rent recoverable from the ryot in accordance with the settlement of 1793, the Legislative Council was not assisted by the Bengal Government or its officers with any remarks or discussions adequate to the importance of the subject; and that, in default of these, they were led astray by remarks of the Agra Board of Revenue, which, however true of the temporarily settled North-Western Provinces, were irrelevant, or were not necessarily applicable to the status and privileges of the ryot in permanently settled Bengal; for whereas the North-Western Provinces ryot's liability to enhancement of his

¹ Momoollee and Wajibee.

APP. XIX. rent from a rise of prices followed from the increase of his zemindar's assessment from the same cause, no similar liability was incurred by the Bengal ryot, whose zemindar's rent was *not* increased on account of a rise of prices.

NEW RULE OF
ENHANCEMENT
OF RENT.

Para. 27, contd.

28. In the proceedings in the Legislative Council, the only discussion respecting rent was raised on an amendment moved by Mr. H. Ricketts (9th April 1859), that "the following new section be introduced after Section XVII" (para. 22, Section IV of this Appendix):—

If in a suit for enhancement or for diminution of a ryot's rent, the evidence produced by the parties shall fail to show what rate of rent is equitably assessable on the land in the ryot's possession, in such case the Collector shall proceed to ascertain the market value of the average gross produce of the land, and shall declare two-fifths of the ascertained value to be the rent payable for such land. Provided always that it shall be competent to the Court to declare a less sum than two-fifths of the value of the gross produce to be the rental payable, if there are any special circumstances owing to which the cultivation of the land must necessarily be attended with more than ordinary expense. When the rent of a ryot's holding has been ascertained as above provided, it shall not, unless on special grounds, be again liable to question for a period of twelve years.

29. The proportion of the gross produce to be declared payable by the ryot as rent was a very serious, all-important subject for the ryot; but Mr. Ricketts did not profess to know much about it: in a matter which, according to its determination, might condemn the ryots to predial bondage, Mr. Ricketts had sought no better guide than his own impressions.

With regard to the objection against declaring two-fifths of the ascertained value to the rental payable, he was under the impression that he had proposed a portion less rather than more than that usually taken when rent was paid in kind. In laying down an arbitrary share which could not be in all cases exactly suitable, he desired to err on the side of the ryot. He left the question to the Council,

who negatived his amendment.

30. This, and some pleasantries about the tests for discriminating soils which the Bombay Regulations provide, were all that Mr. Ricketts contributed to a right decision on the subject.

31. Mr. Currie rightly observed—

He did not know upon what ground the Honourable Member had assumed that two-fifths of the ascertained value of the gross produce

was the rent payable for the land. It was quite true that, when rents were paid in kind, it was the practice for the zemindar and ryot to take half and half,—grain rents obtained generally where, for want of means of irrigation or other causes, the crop was uncertain,—and if the zemindar shared the produce, he also shared the risk. But when it came to the commutation of a proportion of the produce into a money rent to be paid under all circumstances, he apprehended that two-fifths would be found generally too high. In the Institutes of Akbar it was prescribed that the share of the Sarkar—that was, the proportion to be paid by the ryot—should in no case exceed one-fourth; and the honourable gentleman had told them that one-fourth was the prescribed proportion in Batavia. But he apprehended that even one-fourth would be found to be very high for a money rent. On the whole, he (Mr. Currie) thought that they would run very great risk in assuming any arbitrary proportion, and he felt confident that the rule prescribed in Section XVII was much safer and more free from difficulty.

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OF RENT.

Para. 33.

32. This is the sum of the discussion in Council on the proposal of the Select Committee, that, as in the temporarily settled North-Western Provinces, so in permanently settled Bengal, the ryots' rent should be enhanced to fair and equitable rates for the time being. In the North-Western Provinces, however, this enhancement is allowed, in the present day, only thrice in thirty years; in 1859 such frequent revisions appear not to have been authorised. In Bengal, the Council, though professing to follow the model of the North-Western Provinces, did not prevent enhancements every three or five years.

33. The Regulations of 1793 provided—

I. That the zemindar should have no power of enhancing a rate of rent which had been once accepted by zemindar and ryots as the pergunnah rate (the Council did not examine on what grounds, consistent with the faith of Government, which was as solemnly pledged to the ryot as to the zemindar in the settlement of 1793, the ryot's rent should be declared subject to repeated enhancement).

II. That the amount of rent payable by the ryot, as being conformable with the pergunnah rate, having been once ascertained, that amount should be declared permanent. Mr. Sconce pointed out that this should be done in accordance with the Government Regulations of 1793. His remarks were not noticed, except by Sir F. J. Halliday, who shrank from a discussion of the subject.

APP. XIX. 34. In the papers relating to Mr. Currie's Bill, the material notices of the rights of occupancy were as follows :—

TWELVE YEARS' OCCUPANCY RIGHT.

PARA. 34.

I.—STATEMENT OF OBJECTS AND REASONS (*10th October 1857*).

The regulations recognise the right of all resident ryots to the occupancy of the lands cultivated by them, so long as they pay the established rent.

II.—N. W. PROVINCES.—MR. E. A. READE, SENIOR MEMBER, BOARD OF REVENUE (*5th May 1858*).

(a). Practically, according to the usage of the country, and where good faith obtains, the inherent right of occupancy of the resident and non-resident ryot is the same : provided always that both are under common bond of fealty to the landowner. This it is, in the main, which constitutes the difference between the ryot who has a right of occupancy, and the ryot who is only a tenant-at-will,—a distinction immediately understood by the use of the vulgar terms *pucka* and *kutchra*, applied equally to chupperbund and pakthast ryots.

(b). Obviously, where the mouzah is not inhabited or uninhabitable, all ryots are non-resident ; yet such are as much yeomen with right of occupancy of lands which they have cultivated for generations, as they who have as long cultivated lands in villages, properly so called, where they reside.

(c). Then, again, it is quite possible that by division a tract of land may be severed from the parent estate, a new homestead raised, and yet surely, the rights of the old cultivators, who continue to reside as formerly, are not to be affected by the change, though they may be non-resident ryots of the newly constituted mouzah.

III.—N. W. PROVINCES.—MR. W. MUIR, JUNIOR MEMBER, BOARD OF REVENUE (*31st October 1857 and 14th December 1858*).

(a). Section IV goes upon the fallacy of regarding every "*resident* ryot and cultivator" to have a right of occupancy. The subject has been fully discussed in the correspondence which preceded the issue of the Board's circular dated 26th September 1856. This correspondence, including the opinions of all Commissioners and of all Collectors of experience, was ordered to be printed. I have not the collection by me at present, but it distinctly proved that *residence* was not a necessary or expedient condition of right of occupancy. The rule was, upon this correspondence, laid down, in the General Order of the 17th September and the Board's circular of 26th September, as follow,—namely, that twelve years' occupancy gives a fixed title.

IV.—N. W. PROVINCES.—BOARD'S CIRCULAR (*26th September 1856*).

(a). The right of the zemindar to sue in the Revenue Court to eject a tenant-at-will, will only be recognized when the tenant has been less than twelve years in possession. Wherever satisfactory proof of twelve years' uninterrupted possession is brought forward, the summary suit will be dismissed, excepting where the possession is under a written terminable lease.

(b). Where the possession has lasted for a shorter period, and there is no well supported claim on the part of the ryot, in virtue of agreement or lease, to continued occupancy, a decree will be given in favour of the zemindar. The question is independent of the payment by a cultivator, during a term of twelve years, of an unvarying amount of rent. Continued possession for that period, though at different rents, will, equally with occupancy at a uniform rent, bar the summary suit for ejectment.

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Para. 34, contd.

(c). Exception from the growth of prescriptive right has been made in the case of tenures upon terminable lease. Occupancy, extending by a single lease, or by renewed leases, for a period exceeding twelve years, will not bar the zemindar's right to claim ejectment on the expiry of such leases. But there may, in the case of the same occupant, possibly be cultivating prescriptive rights independent of the lease. A pottah for a limited number of years may have been given to a cultivator already possessing a fixed right of tenancy. It will in such case be for the Court to determine whether the occupancy is in virtue of the pottah alone, or whether there is also a right of occupancy independent of the pottah. In the event of such a right being proved, the landlord will not be entitled to claim ejectment.

V.—N. W. PROVINCES.—MR. C. CURRIE.

(a). Hereditary cultivators are an exception to the general rule. Their rights are peculiar to the country, and the landholders are aware that they cannot raise their rents. The fact, however, of their being tenants over whom the landlord possesses no rights beyond the receipt of a fixed rent, is to be deplored, and the class should not, in my opinion, be encouraged.

(b). A cultivator holding a few acres of land cannot be expected to possess capital sufficient to enable him to improve that land to the same extent as the large landed proprietor. But a landholder will never attempt to improve the lands of a hereditary cultivator, knowing that his money would be sunk without a possibility of any profit accruing to himself. The existence of hereditary cultivators and their rights cannot be denied, and these rights should be upheld by legislation.

VI.—SIR F. J. HALLIDAY (27th November 1858).

(a). Khoodkasht and kudeemee ryots I take to be the class intended by the expressions "hereditary ryots holding land at fixed rates," and "resident ryots and cultivators."

(b). Perhaps the opportunity should be taken to define what has always needed definition, namely, the term "khoodkasht and kudeemee ryots." Mr. Sconce, Judge of the Sudder Court, has suggested that, instead of the terms in Sections III and IV of the Bill, there should be substituted the words "ryots having a prescriptive right of occupancy;" and he would fix twelve years as the term of uninterrupted occupancy after which a ryot should come under the description he proposes. To this I would assent, believing that in doing this we shall be discharging a heavy obligation towards the ryots, long unfulfilled by our legislation.

APP. XIX. I would also use means to show that this was the definition of a "khoodkasht or kudeemee ryot" elsewhere alluded to in our Code.

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Para. 34, contd. VII.—MR. A. SCONCE (*19th May 1858*).

(a). In Section IV it is said every resident ryot has a right of occupancy in the land held or cultivated by him. In Section III the words "hereditary ryots" are used. Is there any distinction between the words "resident" and the word "hereditary;" and if there be a distinction, to what does it amount? The right assumed to be vested in a resident ryot is of the highest value, for, paying the rent due from him, his occupancy cannot be disturbed. I suppose that the word "resident" imports permanent residence, or, in other words, hereditary occupancy, and is the English equivalent of khoodkasht or kudeemee ryot, as indicated in section 32, Regulation XI, 1822. This right, however named, seems to be mainly founded on prescription; and perhaps the terms "prescriptive occupancy" best define the existing right, and afford the best guide for testing a disputed tenure by the standard which the law recognises. The first suggestion, therefore, which I have to make is, that the terms used in Sections III and IV should correspond, and that, instead of the words "hereditary" or "resident," should be substituted "having a prescriptive right of occupancy."

(b). I do not say, however, that in using an uniform definition, the difficulties which daily arise for adjustment and adjudication are effectually solved. It may not be doubtful that a khoodkasht ryot has a right of prescriptive occupancy; but prescription grows and is constituted by the effluxion of time, and thus an occupancy which, being immature and new, does not amount to a permanent right, by long recognition became eventually prescriptive. Rights, like customs, may be imperceptible in their origin and progress, which, nevertheless, in time we do not hesitate to characterise and to perpetuate.

(c). The last sentence in Section V of this Bill appears intended to create a right of prescriptive occupancy in favour of a resident ryot with respect to land recently acquired by him. Possession and payment of rent for *three years*, supposing the tenant's right not to be otherwise limited by a written engagement, here create a right of occupancy. This provision, it will be seen, is confined to land newly acquired by resident ryots. Land not before held on a prescriptive tenure becomes, after three years, included within the older land of the ryot, and subject, I suppose, to the same conditions of occupancy; and so, it seems to me, as mere occupation for a limited period restricts the proprietor's right of ouster, a similar provision should be made in favour of other ryots by reason of prolonged occupancy.

(d). I believe that the experience of all of us shows that it is in vain to look for precisely marked distinctions between the old and recent occupancies of ryots. The term *kudeemee* is merely the old *khoodkasht*, which appears to signify the occupancy of land which is peculiarly a ryot's own, and for which others can bring no claim on an equal footing. But distinctions of a broad and general kind are sufficiently noticeable. On the one hand, a khoodkasht ryot is known by a continued occupancy,—

by an occupancy at his own will, if also by the silent sufferance of the zemindar; and on the other, a temporary occupancy is most usually marked by circumstances which are incompatible with a permanent right, such as by recent and accidental acquisition, by variable occupation, or by a lease for a limited period. I should prefer, therefore, to take twelve years' occupancy, recognised by the zemindar—namely, by the receipt of rent, but possibly also by other circumstances—to constitute a right of prescriptive occupancy, except that an occupancy renewable at the discretion of the zemindar may be inferred from the terms of a written engagement, or from the general terms of a deed taken in connection with the circumstances under which the tenure originated, or was continued. Where there is no written engagement, twelve years' occupancy alone will be sufficient to guarantee a permanent right; but if there be a deed without an express condition to quit, the mere termination of the lease will not import a limited occupancy unless that be inferrible from the circumstances of the case.

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Para. 34, contd.

(e). I have said that, with a prescriptive jotedar of 1793, there can be no difficulty: as to prescriptive rights of occupancy of a more recent origin, it seems to me that, whatever difficulty as to the right of assessment may be presented, should be solved by the law, and not left to the unguided judgment of the Courts. I would propose to declare that a ryot holding land under a prescriptive right of occupancy, who shall have necessarily paid, with or without pottah, a definite amount of rent, shall not be liable to a demand for enhancement.

(f). Resident—permanently occupying—ryots are not beholden to zemindars for their rights. If upon any point we are competent to exact the sacred force of common law in this country, it is this—labour and occupancy make the right of the prescriptive ryot. By Regulation VIII of 1793, the revision of a prescriptive jotedar's assessment was limited to reduction effected within three years only; for later titles I propose twelve years. All ryots are not prescriptive ryots; but having defined the nature of a prescriptive ryot's tenure, we should at the same time define the interest which, by the declared principles of the law, should be assured to him.

VIII.—SELECT COMMITTEE'S REPORT (25th March 1859).

(a). We have thought it right to define more particularly the "hereditary ryots" who are to be recognised as having a right to hold lands at fixed rents. The laws in force allude to such right as belonging to "kudeemee ryots," and these have generally been understood to be ryots who have held at the same rate of rent for a period of twelve years before the permanent settlement. We think that, at this late date, no one should be required to prove a title antecedent to the permanent settlement; and we have framed the amended section accordingly, adding a clause which will have the effect of placing a ryot who has held at a fixed rent for twenty years substantially in the position of a ryot who has held from the time of the permanent settlement, unless it be shown by the other party that the rent has varied intermediately.

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RIGHT.

Para. 24, contd.

The Select Committee considered an increase of ryot's rent since the permanent settlement sufficient to subject him to enhancement of rent beyond the old pergunnah rate, overlooking, 1st, that in the period of lawlessness from 1798 to 1859 zemindars had ample power and opportunity to wrongfully vary the ryot's rent; and 2ndly, that in the permanent settlement an increase of the pergunnah rate was not contemplated; the permanency of the rate was assumed throughout the Regulations of 1793.

(b). *Section VI.*—The laws in force speak of "*khloodkasht* ryots"

* Regulation LI, 1795, sec. 10. as possessing rights of occupancy,
" VIII, 1819, sec. XI, cl. 5. and in some places the word
" VIII, 1819, sec. XVIII, cl. 5. *khloodkasht* seems to be considered

as synonymous with "*resident*."* "*Resident*" was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy; and it appears that, after much enquiry, it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with the general practice and recognised rights, that a holding of the same land for twelve years should be considered to give a right of occupancy. We have followed this precedent and altered this section accordingly.

(c). *Sections VII and VIII.*—The alterations in these sections followed as a consequence of the former alterations.

35. Mr. E. M. Gordon, member of the Bengal Sudder Board of Revenue, construed the phrase "*khloodkasht* and *kudeemee* ryots" as follows: strictly speaking, a *khloodkasht* ryot is a cultivator whose house is on the estate the land of which he cultivates. Again, long-continued occupation is implied in the term *kudeemee*, as applied to a cultivator. Mr. Forbes had construed *khloodkasht* ryots as including those "whose rent is assessable according to fixed rules under the regulations in force;" and he suggested, in reference to the Sale Act XII of 1841, that a declaratory Act might be issued stating "that the words *khloodkasht* and *kudeemee* are not intended to have a restrictive meaning, but that the exception is intended to include all ryots and cultivators of the soil who, under Sections 54 to 59 of Regulation VIII of 1793, and Sections 6 and 7 of Regulation IV of 1794, are entitled to have their pottahs renewed."

36. As with enhancement of rent, so with occupancy rights, the practice in the North-Western Provinces was followed in permanently-settled Bengal, though fixity of ryot's

rent, which favours the growth of occupancy right, formed part of, and was involved in, the permanent settlement. The subject was not discussed; the only notice of it was in the following passage in a speech by Mr. E. Currie on introducing, on 10th October 1857, his Bill for recovery of rents:

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—
Para. 36, contd.

The Bill, therefore, commenced with declaring that all ryots of every grade were entitled to receive pottahs from the landholder, declaring the amounts of rent payable by them, and also to have that rent adjusted according to certain fixed rules.

It is also declared that all resident ryots or cultivators had a right of occupancy in the lands held or cultivated by them, so long as they paid the rents legally demandable from them.

These sections contained nothing more than what had been the law since the time of the permanent settlement.

So that, whereas the author of the Bill meant to abide by the occupancy right which the permanent settlement favoured for *resident* cultivators, the Select Committee imported from the North-Western Provinces, and substituted for the Bengal custom, a hybrid occupancy right which favoured *non-resident* cultivators; the Select Committee in effect weakened the position and impaired the status of resident cultivators, by reducing them to the level of non-resident cultivators, and giving to the zemindars the same power over them (as he had over non-resident cultivators) of preventing the growth of occupancy rights, through limitation of pottahs to periods of less than twelve years.

37. But the Select Committee were not content with reducing the resident cultivators in Bengal to the status of occupancy ryots in the North-Western Provinces; they reduced them to a still inferior status; for whereas in the North-Western Provinces the occupancy ryot's rent was not variable in 1859 for the period of the thirty years' settlement, the occupancy ryot, under Act X of 1859, may have his rent raised as often as the zemindar is able to bring him under one or other of the grounds of enhancement which were improvised in Act X of 1859 out of the intuitional consciousness of the legislature. The British Indian Association gave full warning, in their comments on the Bill, of the license into which the zemindars would turn the liberty of enhancing rents. In their petition of 14th February 1859 they observed—

Section 61 of the Bill limits the period of pottahs in permanently-settled provinces to ten years. Considering that the value of land is rapidly increasing, and that the rate of tenancy is constantly changing, especially with the increased demand for the produce of the country, and

APP. XIX. the progressive development of the resources of the soil, your petitioners are of opinion that a shorter period should be allowed for the duration of the pottah—

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Para. 37, contd.

viz., about three to five years, although in Southern India the ryot's rent is fixed for thirty years. But the Association showed, thus, not for the first time, that the interests of the ryots, whose labours are the riches of the country which the Association loves, and of the courts, which decide yearly several hundred thousand suits for enhancing rents, are safe in its keeping. "Whether for good or for evil (your petitioners (May 1857) would fearlessly submit to fair enquiry), the condition and the interests of under-tenants and of all below the sudder malgoozar, the zemindar, have been legislatively entrusted to him," to the impoverishment of the ryots in Behar and through the greater part of Bengal and Orissa.

38. Act X of 1859 affords one other illustration of how lamentably injury to ryots' rights was evolved out of legislator's ideas of the fitness of things, and not from any practical need for the new legislation. Mr. Currie observed, in his statement of objects and reasons—

(a). I have added a section (also in the spirit, but beyond the letter, of the existing law) declaring landholders entitled to receive kabulyets, or written engagements, from their ryots. It is only fair that, when a ryot has a right to demand a pottah, the landlord should have a right to demand a kabulyet. It is for the interest of the ryot himself that written engagements should be exchanged in all cases; (b) *and as in a later part of the Bill I propose that distraint should be allowed only when the distrainer holds a kabulyet, it is necessary to provide landlords with the means of enforcing the delivery of such documents.*

The ground for the innovation, which was urged in the passage (b) in italics, was cut away by the work and the report of the Select Committee on the Bill. They observed—

Considering the very great extent to which the practice of cultivating without written engagements prevails, and the indisposition said to be shown by the ryots in many parts of the country to execute such engagements, we think that it will not be expedient to insist upon the existence of a kabulyet as a necessary condition to the exercise of the right of distraint. Such a request might have the effect of increasing the unwillingness of the ryots to an interchange of agreements, and would probably give rise to such a multitude of suits on the part of landholders for the delivery of kabulyets as the Collectors would find it difficult to dispose of. We have, therefore, struck out the provision.

So that the sole reason for empowering zemindars to institute suits for the execution of kabulyets was Mr. Currie's idea of the fitness of things, as expressed in the

passage (a) in the preceding extract. The lamentable oppression of ryots under the regulation requiring zemindars to grant pottahs (Appendix X, para. 11) was forgotten when this new law empowered them to exact kabulyets.

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OF 1859.

Para. 41.

39. Thus Act X of 1859 introduced three serious innovations, *viz.*—

1st.—Repeated enhancements of a ryot's rent, though the Regulations of 1793 contemplated but one enhancement, *viz.*, to a pergunnah rate fixed in money, and therefore fixed for ever, independent of subsequent rise of prices, unless the produce were changed, when the rate for the altered produce became the permanent rate.

2nd.—Obliteration of the occupancy right of resident cultivators (which, under the old law, was not dependent on the sufferance of the zemindar), in favour of an inferior right of occupancy for resident and non-resident cultivators, the growth of which the zemindar was empowered to interrupt.

3rd.—Power to the zemindar to exact kabulyets from ryots, and thus to harass them about enhancement of rents.

40. These serious innovations on the status and privileges of ryots, as left by the Regulations of 1793, raised no discussion in the Legislative Council;—the only subject of earnest animated debate was whether rent suits should be tried in Civil or in Revenue Courts: the Barrister Members of the Council contended for the Civil Courts, the Civilian Members on behalf of the Revenue Courts; in the eager strife as to which courts should have the ryot, the great changes in his *status* which the law involved were not regarded, and the ryot was left as dead,—as when Satan and the Archangel contended for the dead body of Moses.

41. The legal *status* of the resident cultivator was injured by Act X of 1859; but certain vicious accidents of the relation between zemindar and ryot were put an end to by the Act; *i.e.*, the *Huftum* and *Punjum* Regulations were repealed, and the power of summoning ryots to his cutcherry was taken away from the zemindar. On these subjects there is full information in Appendix XI; but evidence tendered before the Indigo Commission in 1860 brings the information down to a later date.

I.—MR. J. H. REILY, *Commissioner of Sunderbuns (27th June 1860)*.

(a). 2561.—I consider the zemindary power in the mofussil to be omnipotent, and when once the planter is zemindar, nothing can oppose him.

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Para. 41, contd.

(b). 2564.—Does not the zemindar assume the power of forbidding his own ryots to cultivate indigo? Yes, when it suits his interest. I have already explained that the zemindar's power is omnipotent. I have known instances of the zemindar's *naib* summoning the ryots to the zemindar's cutcherry, and taking agreements from them not to cultivate indigo until ordered to do so. This occurred with the late Mr. Russell, of Porahatty.

(c). 2573.—The zemindar's power, as described by you in former answers, would be the same theoretically either in the hands of the planter or the zemindar, and its exercise would depend on the character of the individuals—would it not? Yes, theoretically it is so; but the planter generally looks more to his profit from the indigo than to his profit from the rent. Taking the zemindar's extra cesses and exactions on the one side, which the indigo planter abstains from, and the losses to the ryot from indigo on the other, I believe the two to be equally balanced, as far as the ryot is concerned.

(d). 2595.—Previous to the passing of Act X of 1859, have you known instances of determined or substantial ryots who managed to baffle the zemindars in attempts either to dispossess them or enhance their rent, and who resolutely maintained their ground in civil suits? I have known a few such instances of ryots successfully resisting enhancement of rents, but they have been few, and such ryots have been much harassed, and almost ruined by law expenses.

(e). 2596.—Do you approve of section 11 of that Act, which withdraws from zemindars the power of summoning their tenants for the adjustment of their rents? Yes, I cordially approve of it; I believe the power of compelling the attendance of tenants has been grossly abused. The zemindar has received an equivalent for the loss of that power, in the section which enables him to bring a ryot's *jumma* to sale on the first default of any instalment due, instead of waiting to the end of the year, as was the case under the old law: I allude to section CV.

(f). 2597.—I have known of instances of ryots going to the zemindar's cutcherry on being summoned by a single peon, and coming to an understanding with the zemindar, without any violence, or any recourse to a summary suit. But I should consider these exceptional cases. In general the zemindar made use of the power of summoning ryots to his cutcherry, to pay without receipts, and very often in excess of their regular rents.

APPENDIX XX.

ENHANCEMENT OF RENT FROM 1859.

The Great Rent Case.

In the Great Rent Case which was decided by a Full Bench of the High Court on 19th June 1865, the defendant-ryot in the suit claimed to hold at a fixed rent, but his claim was disallowed, and he was declared to have only a right of occupancy.

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STATED.
Para. 2.

With a view of fixing the rent to which the zemindar is entitled, the Division Court has remanded the suit; but in consequence of conflicting decisions on the point, it was in doubt as to the particular principle on which the calculation should be made. It therefore referred the subject to the Court at large, in the following terms:—

(1). When there has been any increase in the value of the produce, arising simply from a rise in prices, and not from the agency either of the zemindar or the ryot, and the zemindar is entitled to a new kabulyet from an occupancy ryot for an enhanced rent, is the fair and equitable rate to be awarded that which might be obtained by commercial competition in the market, or is it a rate to be determined by the custom of the neighbourhood in regard to the same class of ryots?

(2). If the customary rate of the neighbourhood has not been adjusted with reference to the increased value of the produce, then on what principle is the customary rate to be adjusted?

2. The enquiry had reference to the following parts of Sections V and XVII of Act X of 1859, *viz.*—

The specific
sections of
Act X of 1859 to
which the
question relates.

I.—SECTION V.

Ryots having rights of occupancy, but not holding at fixed rates, as described in the two preceding sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

II.—SECTION XVII.

No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, *viz.* :—

(a). That the rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages, in the places adjacent.

APP. XX. (b). That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

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Para. 2, contd.

(c). That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

3. The Chief Justice, Sir Barnes Peacock, was in the minority, and was alone in his opinion; the other fourteen Judges formed the majority. Sir Barnes Peacock, in a previous judgment in a similar case, had decided as follows:—

I. A definition more useful for our present purpose is that given by Mr. Malthus in his *Principles of Political Economy*. He there defines rent to be “that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being.” The word “outgoings,” used in the above definition, must include a fair and equitable rate of wages for the labour employed in the cultivation of the lands, whether that of hired labourers paid out of capital, or the labour of the ryot himself or of his family, and also, when the rent is paid in money, the labour and expenses of carrying the produce to market, or of converting it into money.

II. We can only say that, in point of law, the landlord is entitled to receive a fair and equitable rent, and that he is entitled to have it so adjusted, with reference to the grounds of enhancement, as to give him a fair and equitable rate. The rent cannot exceed the old rent with such portion of the increase added to it as will render it fair and equitable under the altered circumstances.

III. If the former value of the produce was sufficient to cover all the costs of production, including fair profits as well as reasonable wages, the three rupees of ascertained increase in the value of that produce, per beegah, is in excess of the costs of production, assuming the cost of production to remain the same. In determining whether the whole of that three rupees, or any and what portion of it, is to be added to the rent, the Judge must be guided by all the circumstances of the case.

IV. In the absence of proof to the contrary, he may take the old rent as a fair and equitable rent, with reference to the former value of the produce. He must take into consideration the circumstances under which the value of the produce has increased, and whether those circumstances are likely to continue, and whether the value of the produce is likely to keep up to the present average in the ensuing year.

V. He must also consider whether the costs of production, including fair and reasonable wages of labour, and the ordinary rate of profits derived from agriculture in the neighbourhood, have increased, and he must make a fair allowance on that account. We cannot lay down any better rule for his guidance than that which we have quoted from Mr. Malthus.

To this judgment Sir Barnes Peacock adhered.

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4. The decision of the other fourteen Judges, as stated by Mr. Trevor, in whose rule of proportion the other thirteen Judges concurred, was as follows :—

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IDEAS IN THE
QUESTION
BEFORE THE
COURT.

To the questions which have been put to the Court by the Division Bench, I would reply—

Para. 5.

I. That the terms “fair and equitable,” when applied to tenants with a right of occupancy, are to be construed as equivalent to the varying expressions (a) *pergumnah* rates, (b) rates paid for similar lands in the adjacent places, and (c) rates fixed by the law and usage of the country; all which expressions indicate that portion of the gross produce, calculated in money, to which the zemindar is entitled under the custom of the country.

II. That as the Legislature directs that, in cases of dispute, the existing rent shall be considered fair and equitable until the contrary be shown, that rent is to be presumed (in all cases in which the presumption is not, by the nature and express terms of the written contract, rebutted) to be the customary rate included in the terms.

III. That in all cases in which the above presumption arises, and in which an adjustment of rent is requisite in consequence of a rise in the value of the produce, caused simply by a rise of price, and by causes independent of both zemindar and ryot, the method of proportion should be adopted in such adjustment: in other words, the old rent should bear to the existing rent the same proportion as the former value of the produce of the soil, calculated on an average of three or four years' rent before the date of the alleged rise in value, bears to its present value.

IV. That in all cases in which the above presumption is rebutted by the nature and express terms of the old written contract, the re-adjustment should be formed on exactly the same principle as that on which the original written contract, which is sought to be superseded, was based.

V. And that in cases in which it appears, from the express terms of the previous contract not still in force, that the rents made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the ryot to cultivate indigo or other crops, the old rate must be corrected, so as to represent the ordinary rent current at the period of the contract before it can be admitted to form a term in the calculation to be made according to the method of proportion above alluded to.

5. A confusion of ideas in the second question of the Division Bench (paragraph I, section 2) passed unnoticed by the fourteen Judges, *viz.*, in the inquiry as to what rules of enhancement should be followed, “if the customary rate of the neighbourhood has not been adjusted with reference to the increased value of the produce.” The hypothesis implied that

APP. XX. the zemindar makes the custom, or manipulates the established pergunnah rate (Appendix XVI, paragraph 26): it assumed that the authors of the permanent settlement, when they designed the same permanency and security in the enjoyment of the fruits of his industry, for the ryot as for the zemindar, contemplated an increase of the ryot's rent from a rise of prices in the same regulation by which they exempted the zemindar's assessment from augmentation from such cause, prohibited fresh *abwabs*, and laid down no rule whatever for enhancement of ryot's rents; the very assumption in the hypothesis, that the customary rate in the adjacent village had not been raised on account of a rise of prices, was contradictory of any assumption that it could legitimately have been raised from such cause, before Act X of 1859.

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IDEAS IN THE
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Para. 5, contd.

A further error
in favour of
zemindars
assumed by the
fifteen Judges.

6. The Chief Justice and the other fourteen Judges agreed (para. 3, IV, and para. 4, II) that in a suit under Act X of 1859, for enhancement of rent on account of a rise of prices, the old rent must be assumed as the customary rent at the period before that rise began. Thus they assumed in favour of the zemindar that, notwithstanding all the oppression practised by zemindars from 1793 to 1859 (Appendix XI), the rent paid by ryots towards the close of that period was the proper rent. The Judges thus stereotyped the wrong that had been done under *Huftum* and *Punjum*; just as Lord Cornwallis stereotyped all the illegal cesses down to 1790, by directing their consolidation with the ancient pergunnah rate; but whereas Lord Cornwallis recognised existent illegal cesses only that he might prohibit fresh *abwabs* (*i. e.*, enhancement of ryots' rent), the fifteen Judges consoled zemindars for the loss of *Huftum* and *Punjum* by allowing them, not only to perpetuate as proper rents rent-rolls which had been swollen by oppression, but (keeping those ill-gotten gains as a starting-point or basis) to begin a fresh series of enhancements under the ill-conceived benevolence of Act X of 1859. If rents from 1793 to 1859 were swollen by oppression (Appendix XI), then (1) the rise of prices was only compensating ryots for Government's past failures to protect them; (2) additions to those swollen rents, as if to a proper rent, of the full benefit from a rise of prices, only vitiated the application of the fifteen Judges' reasoning, even had their logic been faultless. It is not surprising that Mr. Elphinstone Jackson was able to state, in his minute on Act X of 1859, that the landlords could not

recover the rent which had been ascertained and decreed in APP. XX. accordance with the rule of Sir Barnes Peacock —

“ because they dare not execute their decrees and dispossess the tenants, being fully aware that they will obtain no new tenants to take the place of the evicted tenants at the rates decreed. * * It was a well known fact, generally talked about in the Nuddea district, that certain landholders were anxious that Mr. Hills should obtain his decrees at the higher rate of rent, because the result would be that the ryot would desert his lands and migrate to their lands, where they would get better terms. They were, however, disappointed in this anticipation, but only because Mr. Hills did not execute his decrees, and did not force his ryots to pay rents in accordance with them.”

—
GROUNDS OF
SIR BARNES
PEACOCK'S
JUDGMENT.
—
Para. 9.

7. There was another error in the wonderful unanimity of the fifteen Judges. Admitting (and it is a large admission) that the rents current when Act X of 1859 was passed were proper rents, according to the custom and law which that Act terminated, those rents should have been regarded then as proper rents for the scale of prices which obtained in 1859. Nowhere in the law, down to Act X of 1859, was it ever declared that zemindars in permanently settled Bengal were entitled to raise the established customary pergunnah rates on account of a rise of prices (Appendix XVI, paras. 16 and 24 to 27); that declaration was for the first time made in Act X by a few gentlemen, very well pleased, like Lord Cornwallis, with their own benevolence, who borrowed their inspiration of a proper rent law for permanently settled Bengal from the temporarily settled North-Western Provinces, just as Lord Cornwallis borrowed his zemindari system for the peasant proprietors of Bengal from the landed aristocracy of England. These gentlemen, through their position in a Legislative Council in which no one was heard on behalf of the many millions of ryots in Bengal, were able to decree that thenceforth ryots' rents should be raised in Bengal on account of a rise of prices; but this revolutionary decree, which destroyed the custom of millions of cultivating proprietors who (collectively) were perhaps as valuable subjects of the State as the legislators themselves, was not of any such superlative excellence as that it should have been honoured with a retrospective operation by a further breach of custom. Only the rise of prices since the passing of Act X of 1859 should have been recognised by the fifteen Judges; but they heeded not this essential point.

Another erroneous assumption in favour of zemindars.

8. The fundamental difference between the fourteen Judges and Sir Barnes Peacock concerned the *status* of the ryot at the date of the permanent settlement; the former held that

APP. X]. the ryot had such a property in land as secured to him the privilege of paying less than a rack-rent; whilst Sir Barnes Peacock maintained that, by the permanent settlement, the ryots were reduced to mere tenants-at-will of the zemindars. Sir Barnes Peacock reasoned so well, that the landlords in whose favour he decided would not enforce his decrees. In the spirit of those decrees he observed—

—
 GROUNDS OF
 SIR BARNES
 PEACOCK'S
 JUDGMENT.

Para. 8, contd

I. It would surprise landowners in England if they were to find that, by an Act having retrospective effect, or by a construction put upon the words "fair and equitable," tenants who had held under leases for 99 years at a nominal rent, or had held for twenty years from year to year at very low rents, had acquired rights of occupancy; and that at the expiration of the leases, or upon the determination of the tenancies, they were not merely not bound to quit, but were entitled to hold on at a lower rate than the landowner could obtain from new tenants.

To which there might be replied in the same strain—

(a). It would surprise landowners in England if they were to find that, though ryots were mere tenants-at-will, yet such was the crooked, malignant, tiger-like nature of zemindars, that they gratuitously resorted to the high-handed oppression, torture, and other enormities of *Huftum* and *Punjum*, from 1793 to near 1859, for raising ryots' rents, instead of raising them in a humane, manly, straightforward way, by simply exerting their legal power over mere tenants-at-will.

(b). It would surprise landowners in England if they were to find that, though ryots were mere tenants-at-will, yet zemindars were restrained from turning them out of their holdings when the zemindar wanted the lands for a *haut*, a road, a *serai*, or any other purpose; on such occasions he had to buy the land from his tenants-at-will, as if it were theirs, not his.

(c). It would surprise landowners in England if they were to find that, though ryots were mere tenants-at-will, yet, to prevent the zemindars from oppressing with impunity the persons paying rent or revenue to them, Regulation VIII of 1793, section 62, prescribed that zemindars should, at their own charge, provide a *putwarri* or village accountant in every village, to keep the accounts of the ryots, as required by the original rules of the decennial settlement.

(d). It would surprise landowners in England if they were to find that, though ryots were mere tenants-at-will, yet Regulation VIII of 1793, Section 64, enacted that—

the proprietors of land, dependent talukdars, and farmers of land of every description, are to adjust the instalments of the rents receivable

by them from their under-renters and ryots according to the time of reaping and selling the produce, and they shall be liable to be sued for damages for not conforming to this rule.

APP. XX.

SIR BARNES
PEACOCK'S
JUDGMENT.

Para. 9.

II. Forgetting, in imprudent zeal for the zemindar, what Lord Cornwallis had done in 1793, Sir Barnes Peacock sarcastically added, in reference to the occupancy right created by Act X of 1859—

(a). To raise the *status* of the ryot, and instead of leaving him as an agricultural labourer without capital or property, to convert him into a co-proprietor, with interests equal to or greater than those of the zemindar, would doubtless be very benevolent if one were to do so at his own expense. But for the legislature to do so by sacrificing the rights of the zemindar, would, as it appears to me, so far from being fair and equitable, be an act of the greatest injustice.

To which it might be replied in the same strain—

(b). To convert the zemindar—a mere collector of rents and official administrator of a zemindary—into a proprietor of land, with interests greater than those of the actual proprietors—namely, the resident cultivators in each village—might have been very benevolent had Lord Cornwallis done so at his own expense; but for his Lordship to have created a few hundreds of great zemindars by sacrificing the rights of millions of cultivators, was an act of unparelled confiscation and of the greatest injustice. Whence we infer that Lord Cornwallis, by declaring that zemindars were the proprietors of the soil, gave them a limited property in that only which he had the power of giving away, *viz.*, in the State's share in the produce of the soil, which the regulations of the decennial settlement restricted to the established pergunnah rates of that day.

9. The statement that ryots were reduced by the zemindary settlement to be mere tenants-at-will, is absurdly inconsistent with the Regulations of 1793, as shown in paragraph 8, section I, and it is contradicted by the zemindars' own estimate of the ryot's *status*; for, had the zemindars regarded the ryots as tenants-at-will, they would have abstained from the enormities they practised under the *Huftum* and *Punjum* Regulations. Sir Barnes Peacock supported his dictum by the following argument:—

I. That the zemindars were, in 1793, declared to be the proprietors of the lands.

Not so (see Appendix XVI, paras. 36 to 41, and para. 46, section I.) The authors of the Regulations of 1793 were careful to define that they used the term "proprietors"

APP. XX. of the land " in the limited technical sense of payers of the land revenue.

SIR BARNES
PEACOCK'S
JUDGMENT.

Para. 9, contd.

II. That from 1793 to 1812 zemindars were prevented from granting pottahs or leases to ryots for terms exceeding ten years; and consequently could not, during that period, have created ryots with hereditary rights of property in the soil.

The ryot's title was independent of the zemindar's; it was not derived from the pottah; it had existed as a more ancient title than the zemindar's without a pottah, under a custom of hereditary occupancy of land which had been, *res nullius*, subject to payment of the established pergunnah rate of rent, which custom was not interrupted by the declaration of the zemindar's proprietary right in a part of the State's limited share, outside the ryot's share, in the produce of the soil. The pottah was prescribed merely as a record of the permanent rent that the ryot was to pay under a permanent settlement which was designed to give the same security of permanency to the ryot as to the zemindar. It did not interrupt the custom under which hereditary occupancy rights grew up without a pottah, insomuch that in 1859 the greater part of the land in Bengal was cultivated without pottahs. The period of the pottah was restricted in the first instance, in order to prevent the permanent allotment of land at less than the pergunnah rate, and it was restricted to ten years in order to facilitate the letting of waste land for such term on a progressive rent rising to the pergunnah rate. As the regulation entitled the ryot to demand renewal of the pottah at the pergunnah rate, it did not terminate the custom of occupancy right at that rate (see Appendix XVI, paras. 42, 43, and 46, Section V).

III. That after Regulation V of 1812, zemindars were entitled to grant leases to all new ryots, and to all ryots who were not entitled to demand a renewal of their leases, such as khoodkasht ryots, *at any rent*, and for any term that might be specifically agreed upon between them; that such leases, whether in perpetuity or for any term, *were binding upon the zemindars and their heirs or assigns*; and that the Courts were to give effect to the definite clauses of the engagements, and to enforce payment of the sums specifically agreed upon.

The words in italics show that the rents spoken of were such as zemindars might be inclined to disavow, except under compulsion of law; that is, they were rents below the customary rates (see Appendix XVII, para. 22, and also paras. 17 to 19, which latter paragraphs show that the leases —(not pottahs, as supposed by Sir Barnes Peacock—) which Regulation XVIII of 1812 empowered zemindars to grant at

any rent that pleased them, referred to leases to middlemen between the zemindar and ryot. APP. XX.

SIR BARNES
PEACOCK'S
JUDGMENT.

Para. 9, contd.

IV. (a). That if the ryot's original holding commenced after the permanent settlement (and if it commenced before, it was for him to prove it, either by positive or presumptive evidence), *he was entitled to have effect given to any definite engagement between him and the land-owner, either as to the duration of the term—if any was specifically granted to him—or as to the amount of rent to be paid, or the rates at which it was to be assessed.*

(b). But that if he failed to prove that any such engagement was entered into, or that the term for which he was to hold was ever fixed or defined, or that any stipulation was made as to the rate of rent at which he was to hold, he need be considered to have entered and held as a tenant for one year only, and to have continued to hold on with the consent of the land-owner from year to year, or, according to the language more generally used in this country, as a tenant-at-will; and that—

(c). But for Act X of 1859, he would have been liable to have his tenancy determined by the land-owner, and to be turned out of possession at the end of any agricultural year. It was stated (in the former judgment of Sir Barnes Peacock) that it was unnecessary to determine whether, according to the law of this country, any notice to Government would have been necessary or not. If by custom or usage a notice to Government was necessary, the ryot would of course be entitled to it before his holding could be determined.

In the passage in italics in extract (a), Sir Barnes Peacock misconceived the facts. The established pergunnah rate was not a matter of contract or engagement between zemindar and ryot; the resident cultivator had, for merely his own security, the option of having the rate recorded in a pottah; but his obligation to continue occupying on the pergunnah rate was not vitiated by his omitting to demand a pottah, the regulations precluding the zemindar from taking more than the pergunnah rate from any one with or without a pottah. Hence the statement in extract (b) was without authority; it was merely Sir Barnes Peacock's inference from the declaration that the proprietary right in the soil is vested in the zemindar; but, as already pointed out, the zemindar's proprietary right was only in the alienated portion of the Government's limited share of the produce of the soil, and that limited right did not trench on the rights and the occupancy holding of the ryot (para. 9, section II). It has also been shown that the curious view, that all who did not hold on pottahs, or under prescription dating from before the permanent settlement, held from year to year at a rent purely discretional with the zemindar, was contradicted by

APP. XX. the zemindar's own proceedings under the *Huftum* and *Punjum* Regulations ; and surely, if the mass of cultivators were mere tenants from year to year, it was very silly of the Legislature to have reserved disputes about title between zemindar and ryot for decision in the Civil Courts, when there could be no cause of action, for the law provided that even a cultivator holding without a pottah could not be disturbed in any case, during the agricultural year, while the zemindar could turn him out (so said Sir Barnes Peacock) at the end of the year without troubling the Civil Court.

SIR BARNES
PEACOCK'S
JUDGMENT.

Para. 9, contd.

V. After Regulation V of 1812, a landowner had as much power to fix his own rents and terms as regards all new ryots and all others, except the khodkasht ryots and such others of the old ryots as were entitled to a renewal of their leases, as any landowners in England.

This has been controverted in Appendix XVI, paras. 16 and 24 to 27, and in para. 9, section IV, and para. 10 of this Appendix. Sir Barnes Peacock sought to establish his position by quoting from the Settlement Regulations of the temporarily settled North-Western Provinces, as if they had any relevancy to the status of the ryots under regulations of a permanent settlement for Bengal, which, in fixing the zemindar's assessment for ever, withheld from him the power of raising ryots' rents beyond the ancient established pergunnah rates.

VI. Since Regulation II of 1793 vested property in land in the zemindars, no one could acquire land except by contract or by adverse possession, or by prescription going back to a time before the permanent settlement.

It is shown in II, and in Appendix XV, para. 9, that the only property in waste land which the zemindary settlement vested in zemindars, was in the pergunnah rate of rent, which the reclaimers of the waste were liable to pay under ancient custom. The cultivator who paid this pergunnah rate held, not by adverse possession (for in paying that rate he gave to the zemindar all that was the property of the latter), but by the simplest form of title, which ripened by prescription. (Appendix XVII, para. 19). Inasmuch, too, as the zemindar was restrained by law from charging any one more than the pergunnah rate, the cultivator who held at that rate did not hold by contract, which came into play only when the ryot sought land on less than the pergunnah rate.

VII. When a ryot holds at a certain rent with the consent of the landlord, there is no adverse holding at that rent.

A resident cultivator who paid the pergunnah rate held independently of the consent of the zemindar, subject to the payment of that rate. Hence, for him, prescription was not needed to make valid an adverse holding; it merely confirmed or secured his simple title against dispossession through an enhancement of rent.

APP. XX.
CAPITAL ERROR
OF THE FOUR-
TEEN JUDGES.
Para. 11.

VIII. Several decisions of the Sudder Court established that as rent is an ever-recurring cause of action, prescription cannot avail for the ryot.

These decisions (excepting one in 1856, or more than sixty years after the permanent settlement) were irrelevant, they having been passed in cases affecting middle tenures between the zemindar and the ryot (Appendix XIX, para. 11, sec. III). The relevant decision was wrong, for its dictum that rent is not affected by prescription is at variance with English law and with the Regulations of 1793 (Appendix XIX, para. 11, sections I and II). The poor ryot, who in the present day is harassed every three or four years with suits for enhancing rents, may indeed admit with a groan that rent is an ever-recurring cause of action; but not in this sense did the grave Judges of the Sudder Court affirm their dictum.

10. Thus, the reasons for Sir Barnes Peacock's opinion, that since 1793 ryots have been tenants from year to year on sufferance from the zemindar, fail entirely, and the failure vitiates his inference that they paid competition rents. Sir Barnes, with all his ability, lacked one essential quality as a judge. If he had possessed a moderate amount of humour, and a becoming sense of the ludicrous, he would have enjoyed, instead of labouring hard to prove from the regulations, the quaint jest of competition rents under the reign of *Huftum* and *Punjum*, and the humorous conceit of mere tenancy-at-will in those against whom for nigh sixty years the zemindars directed that powerful engine of oppression. "Who will elect to be robbed, imprisoned in the zemindar's catchery, beaten, tortured? and who will bear the most torture and beating until he consents to pay more than his proper rent? Do not all speak at once." This was the kind of competitive rent which facetious zemindars obtained from ryots after 1799; and the fifteen Judges were unanimous in regarding rents thus obtained as proper rents.

11. The capital error of the fourteen Judges lay in their regarding the money rent which, from long before 1793, was paid throughout Bengal, as expressing, for the State's share, some recognized proportion of the produce of the soil, thus—

APP. XX. I.—MR. JUSTICE TREVOR.

CAPITAL ERROR
OF THE FOUR-
TEEN JUDGES.

Mr. Trevor.

PARA. 11, contd.

(a). The Government, moreover, has asserted in the preamble of the Regulations XIX and XLIV of 1793 its right to a share of the produce of every beegah in Bengal, assessed and unassessed, unless held lakheraj under a valid grant, or, in other words, unless Government has transferred its right to such share to individuals for a term or in perpetuity, and it has limited its demand in perpetuity over all assessed estates to the sum that, under the settlement, was assessed upon them, leaving *the zemindar to appropriate to his own use the difference between the value of the proportion of the annual produce of every beegah of land which formed the unalterable due of Government according to the ancient and established usage of the country and the sum payable to the public.*

Mr. Trevor overlooked a material phrase, in both Regulations XIX and XLIV, by which the statement of the Government's right was qualified, *viz.*, "a certain proportion of the annual produce of every beegah of land (*demandable in money or in kind, according to local custom*).*"* Where the demand was fixed in money, according to local custom, "*the unalterable due of Government*" (thus fixed in money according to local custom) perforce ceased to represent a fixed proportion of the produce, when once prices rose after that money rent had been fixed, and when it necessarily remained fixed, according to custom, as the "*unalterable due of Government.*" * * *

(b). When, then, the term *pergunnah* rate occurs in the Regulations of 1793-94 and 1799 in connection with *khodkasht* ryots, the question arises, is it confined to *the particular portion* of the produce of the land to which, by the custom of the *pergunnah*, the demand of the zemindar is limited, or does it include also the *abwab* recognized by Regulation VIII of 1793, which has become consolidated with it. * * * I have no hesitation in holding that it must be considered to mean the *assul* or original rate, the rate of *Toorun Mull*, together with the *abwab* which had been subsequently levied from the tenants and recognised by the settlement. It is true that these two quantities joined together did not probably exactly represent that share of the produce calculated in money which, under a pure system of customary rents, would have been developed; but judging from the increased wealth of the country, which had, from commerce and the influx of the precious metals, resulted between the time of *Toorun Mull* and the decennial settlement, the assessment which had been increased in one form (of percentages on the original *assul*) did not probably differ widely from what it would have been had the other and natural mode of calculating the increase been adopted

Mr. Trevor omitted to verify his facts by a reference to the *Aycen Akbari*; had he done so, he would have seen that the customary money rent, which prevailed from before the

decennial settlement throughout Bengal, did not, even when originally fixed, represent a fixed proportion of the produce of each beegah (see *post*, para. 12).

APP. XX.
CAPITAL MISTAKES
OF THE FOUR-
TEEN JUDGES.

(c). To suppose that a pergunnah or local rate of rent could be permanently fixed in amount, *when the circumstances of the country were improving*, is to suppose an impossible state of things. The proportion of the produce calculated in money payable to the zemindar, represented by the pergunnah rate, remains the same, *but it will be represented, under the circumstances supposed, by an increased quantity of the precious metals.*

Mr. Trevor.
Para. 11, contd.

Mr. Trevor's idea of strangeness was strange. Lord Cornwallis distinctly foresaw a rise of prices, yet he fixed the zemindar's assessment for ever; and in enumerating the sources from which the zemindars might increase their rents, he mentioned the *substitution* of more valuable for cheaper kinds of produce, but omitted mention of increased money rents from a rise of prices of the old kinds of produce. Where was the strangeness or the impossibility of requiring that as the zemindar's total assessment would not be raised on account of a rise of prices, so the ryots' money rents, which made up that total assessment would also not be increased? In accordance with this view, the Regulations of 1793 did guard against enhancement by explicitly stating that the amount of customary money-rent to be entered in the pottahs then *to be immediately granted by the zemindar*, would be the sole amount recoverable thereafter by the zemindar, who was expressly prohibited from increasing it by fresh *abwabs*,—*i. e.*, by recourse to the only old ways in which rent in excess of the original *assul* used to be obtained on account of a rise of prices. There is no warrant in the Regulations of 1793 for the passages italicised in the foregoing extract (c).

II.—MR. JUSTICE MACPHERSON.

Rents prior to the settlement were fixed according to the produce of the land, so much of each beegah going to the Government as landlord, and so much to the ryot. *The same principle prevailed after the settlement*, save that the position of the zemindar, as landholder, between the Government and the actual cultivator, was distinctly recognised, and he was declared to be the proprietor of the land in a certain restricted sense. The rents were from time to time adjusted, and there was a pergunnah rate or customary rate of the neighbourhood (*based on the original rule as to dividing the produce proportionately, and from time to time re-adjusted*) to refer to in case of dispute, and according to these rates disputes were settled.

APP. XX. There is no authority in the Regulations of 1793 for the passages in italics; the Government of that day, and of following years, could not have hazarded the assertion in those passages, the Collectors before and after the decennial settlement having been restrained from making enquiries respecting the actual produce of zemindaries, rents, &c.

CAPITAL ERROR
OF THE FOUR-
TEEN JUDGES.

Mr. Macpherson

Para. 11, contd.

III.—MR. JUSTICE CAMPBELL.

(After desultory remarks,—after quoting Regulation IV of 1794, respecting renewal of pottahs at not more than the “established rates of the pergunnah for lands of the same quality and description,”—and after quoting from Lord Cornwallis’ minute, that “the rents of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste lands”) Mr. Justice Campbell observed—

Looking to the expressions regarding the expiry and renewal of pottahs and the advantage to be derived from more valuable articles of produce, I *imagine* that the framers of the regulations *very probably* contemplated periodical *re-adjustments of rates* between zemindars and ryots *with reference to the value of produce*, in the same way as was originally contemplated in Akbar’s settlements.

There is no warrant in the Regulations of 1793 for the passages in italics. The citation from Lord Cornwallis’ minute of the only two ways in which a zemindar could increase his rents, does *not* include an increase of rent from a rise of prices of the customary articles of produce.

IV.—MR. JUSTICE SETON-KARR.

But the theory of the old rent as the basis (for it is not denied that there must be some existing basis on which to decree an enhancement), *plus* the increased value of the produce as the superstructure, cannot be supported by any such reasoning. If we still keep the old rent, and add to it, we are dealing with what was notoriously fixed by the ancient custom of the country, that is, with cases in which landlord and tenant came to an understanding that *they were to share in the profits of the soil* without any thought of competition or rack-rent. * * We thus commence with a customary rent; and it seems to me, therefore, that enhancement ought to be decreed on somewhat the same principles as those by which the rent was originally fixed—*viz.*, by custom—unless the law has laid down some other principle as our guide. * * That a *reasonable share of the increase is to fall* to the zemindar on account of his increased expenses and his unquestioned position and rights, is admitted, so as to make the division fair and equitable; but it must be so to

APP. XX

AKBAR'S
SETTLEMENT.

Para. 12.

both parties. And this requisition will be hardly satisfied by deducting in the ryot's favour the mere increase of the cost of production. In many cases this may be much less than the increase in the value of the produce. And in all cases it will not amount to a recognition of the rights and position of the ryot: * *

Concurred, also, in the judgments of Mr. Justice Trevor as well as Mr. Campbell.

V.—MR. JUSTICE MORGAN.

Before the permanent settlement, and from a time long previous to our rule, the state of property in land here seems to me to have been a kind of joint ownership between the Government and the cultivators. The Government was entitled to a portion of the produce, and the cultivator was entitled to the rest. The share of each was ascertained, and the right of the cultivator to hold his land so long as he paid his assessment to the Government was never questioned. It is true that the State did not limit itself to the share of the produce set apart for it. It was the judge of its own wants, and had the power to exact at will from the cultivator; but, in fact, it so far recognised and respected the *established mode of division*, that its increased demands did not take the shape of an increase in the cultivator's rent." The "*assul jumma*," or original rent, remained unchanged. Of the many assessments which burthened the ryots' lands, this one invariably *took the lead*, and had the semblance at least of *governing the mode by which the others were determined*.

VI.—MR. JUSTICE NORMAN.

At the time of the decennial settlement it was recognised that, by the ancient usage of the country, the ruling power was entitled to a certain proportion of the produce of every beegah of land (see Preamble, Regulation XIX of 1793). Of this public demand, which was then the sole rent demandable from the ryots, ten-elevenths were considered as the right of the public, and the remainder the share of the zemindar (see Preamble, Regulation I of 1793). Thus, the original theory of rent in this country appears to have been that it was a right to a certain proportion of the gross produce. The Regulations of 1793, which have been already referred to at great length, while formally declaring the property in the soil to be in the zemindars, make provision for the protection of the ryots in their holdings, and for regulating the amount of rent to which they were to be subject.

12. In Bengal, money rents appear to have prevailed from the time of Akbar. The Emperor tried but failed to collect rent in kind throughout his empire (Appendix V, para. 4, III, k. 2); he then substituted a fixed money rent. In part III of the *Ayeen Akbari* the following passages occur:—

OF THE TEN YEARS' SETTLEMENT.

I. From the commencement of the immortal reign, persons of integrity and experience have been annually employed in preparing the current

APP. XX. prices for His Majesty's information, and by which the rates of collection were determined; but this mode was attended with great difficulties.

**AKBAR'S
SETTLEMENT.**

Para. 12, contd.

II. When Khajeh Abdul Majid Asof Khan was raised to the vizaret, in the fourth year of the reign, the jumma of the lands was only computed, and he increased the tunkhas just as he thought fit. As at that time the empire was of but small extent, the exigencies of the servants of the crown were accumulating daily; and the tunkhas were levied partially, according to the particular views of corrupt and self-interested people.

III. But when this great office was entrusted to the joint management of Rajah Tudermull and Mozeffer Khan, in the fifteenth year of the reign, they appointed ten canoongoes to collect the accounts of the provincial canoongoes, and which were brought to the royal exchequer. Then, having taken from the canoongoes the tukseem mulk, or divisions of the empire, they estimated the produce of the lands, and formed a new jumma. This settlement is less than the former one; however, there hitherto had been a wide difference between the settlement and the receipts.

IV. When, through His Majesty's prudent management, the bounds of the empire were greatly enlarged, it was found very difficult to procure the current prices every year from all parts of the kingdom; and the delays that this occasioned in making the settlements, were productive of many inconveniences. Sometimes the husbandmen would cry out against the exorbitancy of the demands that were made upon them; and, on the other side, those who had tunkhas to collect would complain of balances. His Majesty, in order to remedy these evils effectually, directed that a settlement should be concluded for ten years; by which resolution, giving ease to the people, he procured for himself their daily blessings.

V. For the above purpose, having formed an aggregate of the rates of collection from the commencement of the fifteenth year of the reign to the twenty-fourth, inclusive, they took a tenth part of that total as the annual rate for ten years to come. From the twentieth to the twenty-fourth year, the collections were made upon grounds of certainty; but the five former ones were taken from the representations of persons of integrity; and, moreover, during that period the harvests were uncommonly plentiful, as may be seen in the tables of the nineteenth year's rates.

13. It appears from this account that Toodur Mull's settlement was based, like the permanent settlement, on the actual collections from each province during ten years (Appendix V, para. 4, III*k*). The yearly average, struck on the total for the ten years, for each province, was the amount which the soubahdar of the province had to send to the royal exchequer. The account stops at this point; but we know from other sources that the amount allotted to the province was distributed to each division, district, zemindary, and village

in it, according to the corresponding averages for the ten years which made up the total average for the province. The yearly average obtained for the village was, in like manner, distributed among the holdings of the ryots in it; and the average amount for each holding became the *assul jumma*, which, though imposed at the outset for ten years, was renewed as the permanent assessment. Sir John Shore observed—

APP. XX.

AKBAR'S
SETTLEMENT

Para. 14

Tory Mull is supposed to have formed his settlement of Bengal, called the *Tumar Jumma*, by collecting, through the medium of the canoongoes and other inferior officers, the accounts of the rents paid by the ryots, which served as the basis of it. The constituent parts of the assessment were called *Tukseem*, and comprehended not only the quota of the greater territorial divisions, but of the villages, and, as it is generally believed, of the individual ryots.

14. This view is confirmed by the account of the rent of a ryot's holding which Mr. Grant, Serishtadar of Bengal, printed as an example of such accounts in his Analysis of the Finances of Bengal (see the Fifth Report). In it the *assul ryoty jumma* is stated in one sum for the total beegals of the holding, and the several *abwabs* imposed in subsequent centuries are then detailed. From all this we gather that—

I. Akbar's final settlement was on the basis of a money rent, that is to say, it was struck on the yearly average money amount of the actual collections during ten years, by such procedure and on such local returns as admitted of a corresponding allotment of the assessment to each holding of the millions of ryots whose total payments formed the provincial totals of the local returns.

II. Where the custom prevailed of rent in kind at a fixed proportion of the produce, this assessment of Toodur Mull did not interfere with the custom; his money allotment to each village remained a fixed amount; but it was made up, yearly, within the village, by numerous proprietors—members of the village communities—in accordance with their custom of rent in kind, commuted at the market price of the year. These yearly adjustments threw responsibility and work on the representative men, or headmen of villages, who developed in Behar into talukdars, and in time were partly mistaken in the North-Western Provinces for zemindars.

III. Where the custom of rents in money prevailed, as in Bengal, Toodur Mull's settlement confirmed the custom, and stereotyped the rates afforded by his *assul jumma* on each ryot's holding, till they crystallised as the ancient established rates of the *pargunnah*. The *abwabs* imposed by later

APP. XX. subahdars did not affect these rates, because they were levied as percentages on the original or *assul jumma*; neither did the periodical revisions of the total assessment on each zemindary affect the established pergunnah rates for the ryots; for, as already explained (Appendix XVI, para. 5, section II), the object of those revisions was simply to tax the zemindars for lands reclaimed from waste since the last assessment, without disturbing the ancient established pergunnah rates for the ryots.

AKBAR'S SETTLEMENT.

Para. 14, contd.

IV. It is obvious that Toodur Mull's settlement for Bengal, where fixed money rents prevailed, required from the ryots, not a fixed proportion of the produce—whereof the amount varied with the season, and its amount value varied further with the market prices of the year—but a fixed money amount, which was free from the risks of season and of fluctuating prices.

V. Successive subahdars of later generations did indeed impose *abwabs* by which, for themselves partly and for the State, they claimed an increase of rent on account of a rise of prices; but those cesses were kept apart from the established pergunnah rates, which were unaffected by a rise of prices.

The Permanent Settlement was modelled on Akbar's.

VI. The authors of the permanent settlement eschewed the practice of these later subahdars and followed the example of Akbar. Like him, they based their assessment on actual collections, introduced it in the first instance for ten years, and then declared it permanent. But not having Akbar's advantage of a perfect organisation of village accountants, independent of the farmers of revenue, and of complete village accounts, they were not able to ensure, like him, the allotment in detail to each ryot's holding of its share of the total assessment fixed for the zemindary.

VII. In the spirit of Akbar's settlement, the authors of the permanent settlement directed, in Regulation VIII of 1793, that the existing cesses should be consolidated with the established pergunnah rate in one sum, which should thereafter form, for each ryot, the entire amount demandable from him, irrespective of any future rise of prices, for (eschewing the practice of the later subahdars) they in the same Regulation prohibited the levy of fresh *abwabs*, that is, prohibited recourse to the only way in which ryots' rents had been raised in the past on account of a rise of prices. The prohibition was the obvious complement of the arrangement by which the assessment of the zemindars was declared to be fixed for ever.

VIII. Hence, in Bengal, where money rents prevailed, the specific amount of money rent which the zemindar was required in 1793 to enter in the ryot's pottah as the sole amount thereafter recoverable from the latter, was not liable to be increased on account of a rise of prices, on the basis of any imaginary fixed proportion of the produce of the soil, such as had not regulated the Bengal ryot's rent for centuries before the decennial settlement.

APP. XX.
—
A PERMANENT
SETTLEMENT
FOR THE RYOT
WAS INVOLVED
AND IMPLIED IN
THE REGULA-
TIONS OF 1793.

—
Para. 15.

15. Reverting to the extracts in para. 11, it appears that throughout the extracts it is assumed that the Regulations of 1793 fixed permanently the *proportion* of the produce of the soil which appertained to the ryot and to the State respectively, and of which the State's share was paid by the ryot to the zemindar. The testimony in this assumption that the Regulations of 1793 fixed *permanently* the demand on the ryot, is correct; but the assumption that for Bengal the permanency so fixed was that of the proportion of produce, and not of the money amount recoverable from the ryot, was wrong, for the following reasons:—

A permanent
settlement for
the ryot was
involved and
implied in the
Regulations of
1793.

I. Where a fixed proportion of the year's produce is taken as rent at the current price, the amount so taken varies yearly with the quantity of produce and with the market price; that is, the risk of bad seasons and of low prices is shared by the zemindar. Where, however, rent is fixed in a money amount which does not vary from year to year, the character of the rent is changed; it ceases to be a fixed proportion of the produce of each season, and, in course of time, as prices alter, it represents less and less the old proportion of the yearly produce in days when the rent was taken in kind and was commuted at the current price of the year.

II. This had been the case in Bengal for some generations before 1790, so that the fixed money rents existing in that province at the date of the decennial settlement had no relation to any fixed proportion of the produce, and they were not resolvable into any such fixed proportion by any manner of means.

III. Accordingly, where the Regulations of 1793 spoke of the ryot's rent as being leviable, respectively, in kind (as in Behar) and in money (as in Bengal), they spoke of things which were not equivalents, and used terms which were not mutually convertible; and when they enacted that the amount payable in money by the ryot should be specifically entered in his pottah, and that thereafter the pottah should be the limit of the demand upon him, they precluded any

APP. XX. further enhancement of the rent, especially as the levy of fresh *abwabs* was prohibited.

A PERMANENT
SETTLEMENT FOR
THE RYOT WAS
INVOLVED AND
IMPLIED IN THE
REGULATIONS OF
1793.

Para. 15, contd.

IV. The ancient law of the country, by which the State was entitled to a certain proportion of the annual produce of every beegah of land (demandable in money or in kind, according to local custom), was indeed quoted in Regulations XIX and XLIV of 1793; but so also did Regulation II of 1793, section I, set forth the proportions of ten-elevenths and one-eleventh, in which the State's share of the produce, as received in aggregate from the ryot, was divided between the Government and the zemindar. If the zemindar was exempt from an increase of his assessment on account of a rise of prices, because the amount thereof, though purporting to be a fixed proportion of the produce, was stated in money, the ryot in Bengal, who did *not* give a fixed proportion of his produce as rent, but whose ancestors, for generations, had paid a fixed money rent, was similarly, nay, more markedly, exempt from a like enhancement on account of a rise of prices, by the direction to his zemindar in 1793 to enter in the ryot's *pot-tah* the specific money amount payable thereafter by him.

V. Had the Government enforced an observance of the law, it would have been the most natural thing in the world that the established customary *pergunnah* rate of 1793 should be perpetuated without change. In those days, and for the many generations during which the *pergunnah* rates had acquired the prescription or sanctity of ancient custom, there was a competition among zemindars for ryots; the *custom* of the *pergunnah* rate was necessarily imposed, therefore, by the ryots, whose name was legion—not by the zemindars, who were few. The latter could not create the custom; the former, perforce, would not destroy it. The resident cultivators had a right to take up land in their own village at the customary rate, and non-resident cultivators were attracted to the village only by less than the customary rate. Where, thus, there was no room for enhancement of the *pergunnah* rate, unless by violence of the zemindar, it was natural that the Regulations of 1793 should treat the *pergunnah* rate as permanent.

VI. That in permanently settling the zemindar's rent, the ryot's rent should also be permanently fixed, was an idea which would naturally occur to the authors of the permanent settlement, who were familiar with the copyhold tenure in England and its permanent rent, and with the intentions of Warren Hastings and Sir Philip Francis that the ryot's rent should be permanently fixed.

16. Hence, the unquestioning spirit in which the Courts accepted as proper an increase of the established pergunnah rate by the zemindars, is astonishing—

APP. XX

—
ERRONEOUS
ASSUMPTION
THAT ANCIENT

RATES COULD BE
INCREASED.

I.—MR. JUSTICE TREVOR.

Since the decennial settlement, however, the rates of rent have adjusted themselves to the varying prices of the produce, irrespective of any extraneous demand; and the terms used in Regulation V of 1812 have regard to the varying rates in the different localities, which have resulted solely under the increased activity and industry caused by the comparative security obtained under the permanent settlement.

Para. 16.

II.—MR. JUSTICE MACPHERSON.

It further appears from the Regulations of 1812 that the adjustment of the pergunnah rates was much neglected—probably owing to no great change having for many years taken place in the amount or value of produce—and that there were no recently adjusted rates to refer to, and no customary rates to form any general guide throughout the country.

The Regulations of 1793 required the zemindar to collect, ever after, according to the rates of that day, which were to be entered in a pottah for each ryot, in a specific amount of money. They spoke of these rates as established customary rates, and they prohibited zemindars from levying fresh *abwabs*; yet Mr. Justice Macpherson spoke of the zemindar's neglect in not manipulating, to his own views of enhancement, the ancient pergunnah rates which the custom of ryots had established,—as if the manipulation of custom by zemindars was not a contradiction in terms, and a euphemism for the breach of the Government's solemn engagement with the ryot, who, in all else, was so greatly injured by the Regulations of 1793.

III.—MR. JUSTICE CAMPBELL noticed that in the Regulations of 1793 no provision was made for enhancing ryots' rents on account of a rise of prices, for the obvious reason (which Mr. Campbell missed) that any such enhancement was not contemplated. He proceeded—

(a). When the customary rates were enhanced, it must have been done without the least assistance from the Law (which said nothing about their enhancement) or the Courts of Judicature. In fact, however, the rates have generally been enhanced. The zemindars had great power over their ryots; the interference of the Law was but partial; the zemindars could do much without Law; and the reliance of the ryots was much more on custom than on Law.

If the zemindar, instead of raising the customary pergunnah rate, had levied *abwabs*, leaving the customary rate

ERRONEOUS
ASSUMPTION
THAT ANCIENT
CUSTOMARY
RATES COULD BE
INCREASED.

Para. 16, contd.

APP. XX. intact, and if he had sued in the Civil Court for *abwabs*, Sir George Campbell would have dismissed the plaint; but the zemindar having defied the law and raised the pergunnah rate, Sir George Campbell acquiesced in his act as natural and proper, because the powerful zemindar "could do much without law." Though Sir George Campbell wrote "law" with a big L, yet evidently he had more respect for the zemindar's power than for law. He proceeded—

(b). Moreover, in this matter the zemindars had a strong equity on their side. Although no rule of enhancement was laid down by the Law, *it seemed hard* that, as the relative value of produce and money altered, as produce became relatively more valuable and money relatively less valuable, the zemindar should continue to receive, *as representing his share of the produce*, a sum of money actually representing a smaller purchasing power, a smaller quantity of grain, and a smaller proportion of the produce. The fact seems to be that *the contingency of a change in the relative value was omitted to be provided for*.

The omission was intentional. The zemindars were amply compensated in the prospective rent from waste lands for the denial to them of power to raise the rates of rent as they existed in 1793. Lord Cornwallis distinctly contemplated a rise of prices, and yet fixed the zemindar's rent for ever; and on precisely the same grounds, he omitted to legalise enhancement of the ryots' rents on occasion of a rise of prices. The fallacy in the second italicised passage in extract (b)—*viz.*, that in Bengal, with its fixed money rents, the zemindar was entitled to a fixed share of the produce—has been exposed in a previous paragraph. The first italicised passage in the same extract is remarkable: such was the devil's luck of zemindars, that even Sir George Campbell was misled in their favour by sentiment. Impressed with their power, he thought that they might be indulged in their foible of enhancing rent; touched by their irresistible propensity to enhance rent, he checked the law's propensity to punish them for it, and tolerated *abwabs* as a pardonable way of enhancing rent, though the Regulations of 1793 did prohibit fresh *abwabs*, and did not provide for enhancement of the customary rent as established in 1793; but what the Regulations did or did not do or say, was, perhaps, of less consequence to Sir George Campbell than his own ideas of the fitness of things.

17. It appears from this review of the judgments in the Great Rent Case, that facts relating to the permanency of the pergunnah rate of rent in 1793 were misconceived, even in

one of the two questions referred for the decision of the Full Bench—that large assumptions were made in favour of the zemindar, and that essential points in favour of the ryot were overlooked. The result was a ruling which, not long since, the Government of Bengal testified was unworkable with any satisfaction to zemindars and ryots.

APP. XX.
—
SUMMARY OF
THE ERRORS IN
THE JUDGMENTS
OF THE GREAT
RENT CASE.
—
Para. 18.

18. The main question for the Full Bench was the proper rule for determining a fair and equitable rate of rent for occupancy ryots. Act X of 1859 was passed because, as stated in its preamble, it was “expedient to re-enact, with certain modifications, the provisions of the existing law relative to the rights of the ryots with respect to (1) the delivery of pottahs, and (2) the occupancy of land; (3) to the prevention of illegal exaction and extortion in the matter of rent, and (4) to other questions connected with the same,” &c. The purpose of the law was not to diminish the ryots’ rights, but to guard them by additional securities. Accordingly, in determining “a fair and equitable rate of rent” for the occupancy ryot, under Act X of 1859, it was necessary to ascertain carefully that such rent was not more than the rent recoverable from the ryot in accordance with his legal status from 1793 to 1859. Hence a very precise and accurate statement of the legal *status* of the ryot, as presented in the Regulations of the permanent settlement, and not alone of his actual *status* as brought about by the oppressions of the zemindars for long after 1793, was indispensable to a correct judgment on the question. Yet we find that the course of the argument was as follows:—

I. The Regulations of 1793 spoke of old-established customary rates of rent in each pergunnah which were to be recoverable thereafter from the ryots;—the customary rate (in those days when there was a competition by zemindars for ryots) being one which was established by the custom, perforce, not of zemindars, but necessarily of the ryots, who would not break that custom to raise the rent over their own heads. Accordingly, the Regulations of 1793 did not provide for any enhancement of the pergunnah rates from a rise of prices.

II. Nevertheless, the Division Bench, in the second question which it referred to the Full Bench, assumed that the customary pergunnah rate of 1793 had legitimately been raised by the zemindars from 1793 to 1859, on account of a rise of prices (para. 5).

SUMMARY OF
THE ERRORS IN
THE JUDGMENTS
OF THE GREAT
RENT CASE.

PARA. 18, CONTD.

APP. XX. III. All fifteen Judges concurred that, notwithstanding the oppression under *Huftum* and *Punjum*, which, for two generations after 1799, the zemindars practised to enforce their exactions from ryots, the rent paid by ryots towards the close of the period from 1793 to 1858 was the proper rent.

IV. And although the law from 1793 to 1858 nowhere provided for an enhancement of rent on account of a rise of prices, yet the fourteen Judges assumed that the new law of 1859, which did provide for enhancement from this cause, had retrospective operation (para. 7).

V. That is to say, the fourteen Judges did not rule, as they should have done, that only such rise of price as occurred after the passing of Act X of 1859 could be received as ground of enhancement (this much was required from them even in logical agreement with their erroneous assumption in III); they assumed that the full rise of price since the last adjustment of rent, though dating from long prior to 1859, should be regarded in enhancing that rent.

VI. Sir Barnes Peacock, indeed, went farther. He held that previous prices and rents should be disregarded; that ryots, since 1793, had been mere tenants-at-will of the zemindars; and that therefore the ryots' rent should be determined according to the definition of Mr. Malthus. Sir Barnes, however, forgot that "it would surprise land-owners in England if they were to find" that they must adjust their farmers' rents according to Malthus. He reasoned, also, under a delusion that the mass of the ryots—who, in the practice of the zemindars themselves, were recognised as occupancy ryots under a custom more ancient than law—were mere tenants-at-will; and under the influence of these capital errors, he passed in favour of certain landlords decrees which gave them so very much more than any ryot could pay, that the landlords would not enforce their decrees (paras. 8 to 10).

VII. The other fourteen Judges also misconceived facts in assuming—

(a). That the money rent which from long before 1793 had been paid throughout Bengal, expressed a fixed proportion of the produce of the soil as the State's share (para. 11).

(b). That accordingly, as prices rose after 1793, the zemindars were entitled to raise the pergunnah rates of rent commensurately with that rise of prices (para. 15).

Both these assumptions were wrong; for—

(c). Under ancient custom, antecedent to the time of Akbar, the rent paid by ryots throughout Bengal was a

money rent ; and as Toodur Mull's settlement, under Akbar, APP. XX. was based on actual collections in money, that is, on money rents, it did not interrupt that custom (paras. 12 and 13).

SUMMARY OF
THE ERRORS IN
THE JUDGMENTS
ON THE GREAT
RENT CASE.

Para. 18, contd.

(d). A fixed money rent, maintained as such for long, by custom, is the very opposite to a fixed proportion of the produce of the land ; for if, at the outset, the rent was adjusted to any definite proportion of the produce, it even then deviated from the normal share in the produce of each season, by taking a lower average of proportion for several seasons, so as to provide an allowance to the ryot for his risks in bad seasons, and in years of low prices ; and it became progressively less and less than that proportion, according as prices rose in the long period, during which custom may have continued the money rent at the amount at which it was originally fixed (para. 14).

(e). Akbar's assessment remained as the *assul jummah* ; the additional demands on the ryots in Bengal, in later reigns, were levied in the form of *abwabs*, or cesses, at certain percentages on the *assul* which left intact the ancient *pargunnah* rates. These *abwabs* were partly exactions, partly increases of demand on account of a rise of prices. Paying regard to this latter consideration, Lord Cornwallis's Government directed the consolidation of these existing *abwabs* with the customary *pargunnah* rates, and the levy, thereafter, of the money amount in which that aggregate was to be stated, as the sole demand recoverable from the ryot.

(f). At the same time, the levy of fresh *abwabs*, or the only form in which under the former usage money rent could be increased on account of a rise of prices, was prohibited ; and in the Regulations of 1793, the Government deliberately abstained from laying down any other rules for enhancing rent ; it having been distinctly recorded in the minutes of Lord Cornwallis and Sir John Shore, and in the orders of the Court of Directors confirming the permanent settlement, that, under that settlement, the ryot was to have the same security of permanency as the zemindar, whose assessment was declared to be not liable to increase on account of a rise of prices.

(g). Accordingly, in Bengal, where money rents had been paid under a custom some centuries old, and where, accordingly, the money rent did not represent any fixed proportion of the produce, there was no room, after the enactments in the Regulations of 1793 (*e* and *f* above), for an increase of rent from a rise of prices, a fixed money rent

APP. XX. being freed, by its permanency or fixed character, from considerations of any particular scale of prices.

CONCLUSION.

19. Thus we find that—

Para. 18, contd.

Conclusion.

I. Sir Barnes Peacock was wrong in assuming that after 1793 ryots became tenants from year to year, and zemindars became entitled to raise the pergunnah rates of rent at discretion.

II. The fourteen Judges were wrong in assuming that the money rents which, as established pergunnah rates, had been paid throughout Bengal, under a custom of centuries which the permanent settlement did not interrupt, but was designed to preserve, could be legally raised by the zemindars after that settlement.

III. The zemindars did indeed raise those pergunnah rates from 1793 to near 1859; but they did so in defiance of law, by violence, under the power which, for a wholly different purpose, was given them by the *Huftum* and *Punjum* Regulations.

IV. Act X of 1859 was not meant to legalise the wrong done under *Huftum* and *Punjum*, but to prevent high-handed oppression. The legal status of the ryot remained the same as in 1793, *viz.*, the rightful occupancy of the land which he cultivated in his own village, subject to payment of only the pergunnah rate of 1793, plus cesses of that year.

V. Accordingly, all that the ryot was paying in 1859, as rent and cesses in excess of the rent and cesses of 1793, was extortion; and in adjudicating the fair and equitable rate of rent payable by the ryot under Act X of 1859, it behoved the Court to allow an increase of rent for only any rise of prices since 1859; and to allow no increase on this account, except to the extent of any excess of the gross increase from this cause, since 1859, over the amount by which the ryots' payments before the passing of Act X of 1859 may have exceeded the amount which would have been recoverable from him, in Bengal, on the scale of payments in 1793.

VI. Even this much of award would have been a breach of the engagement in 1793, by which the faith of Government was as solemnly pledged to the ryot as to the zemindar; but that breach of engagement is chargeable on the legislature that passed Act X of 1859, which—nearly seventy years after the decennial settlement, and for the first time under law—subjected the ryots' rent to enhancement, from a rise of prices.

APPENDIX XXI.

RENT LEGISLATION SINCE 1859.

1. The examination of the judgments on the Great Rent Case has interrupted the regular course of the narrative of the relations between landlord and tenant. The repeal of *Huftum* and *Punjum* by Act X of 1859, the formation of sub-divisions under deputy magistrates, and the attention bestowed from 1859 on the reform of the police (which resulted in a considerable enlargement of the police force throughout Bengal upon improved pay), freed ryots to a great extent from the oppression of brute force—of might over right. Acts X and XI of 1859 promoted, however, a new form of oppression; they opened out fresh sources of litigation, and a year later, a revision of the Stamp Act made litigation costly. If summons to the zemindar's cutcherry and summary distraint of ryot's property, with its plunder as the regular consequence, ceased under Act X of 1859, there was framed for the ryot in a short time, under that law, a fresh burden, perhaps more grievous for him to bear and more crushing to his spirit, since it was the law that exposed him to bear the new burden, *viz.*, heavy law charges in rent suits, —charges which, *1stly*, are greatly disproportionate in each suit to the small amount involved, and of which, *2ndly*, the burden is often increased twelve-fold by the monthly repetition of the suits. The Sudder Court had ingeniously improvised a theory that rent is an ever-recurring cause of action; and zemindars, appreciating the jest, facetiously retailed it monthly, through their amlah, to ryots of a sullen disposition, who, resisting the zemindar's wishes, had to be taught to smile when he spoke to them through his amlah.

2. The ryots, however, learnt their freedom, under Act X of 1859, from the old oppressions, sooner than the zemindars learnt their new power under the same Act. The zemindars complained accordingly, as after the permanent settlement, of difficulty in realising rents, and indigo-planters complained of difficulty in obtaining execution by ryots of their engagements.

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THE OPPRES-
SIONS DISCON-
TINUED UNDER
ACT X OF 1859
HAVE BEEN
REPLACED BY
EXPENSIVE
LITIGATION.

APP. XXI. 3. In consequence, Act VI of 1862, of the Bengal Council, was passed for facilitating the recovery of rent. Among its provisions were the following :—

GROWTH OF
EXPENSIVE
LITIGATION.

Para. 3.

I.—SECTION XIV.

So much of section 71 of Act X of 1859 as directs that no fee for any agent shall be charged as part of the costs of suit in any case under the Act, is hereby repealed. In awarding costs to either party in any suit hereafter to be brought under the said Act or under this Act, it shall be competent for the Collector to award to such party, on account of the fees of any agent or mooktear employed by him, such a sum not exceeding the rate of fee chargeable under the provisions of section VII of Act I of 1846 for pleaders in the Civil Courts, as the Collector may direct.

II.—SECTION II.

In any suit hereafter to be brought for rent under Act X of 1859, if it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount due by him, and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his duly authorised agent, or, in case of refusal of the plaintiff or agent to receive the amount tendered, has not deposited such amount with the Collector before the institution of the suit in manner hereinafter mentioned, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per cent. on the amount of rent decreed, as the Court may think fit. These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of twelve per cent. per annum from the date of decree until payment thereof, and shall be recoverable from defendant in like manner as sums decreed to be paid by defendants under Act X of 1859 are recoverable.

4. We have seen in Appendix XX, para. 8, *Id*, that, under Regulation VIII of 1793, section 64, which is still unrepealed, zemindars are restrained from receiving rent from ryots before the reaping of the harvests and sale of the crops. The first turn of the screw was applied when Act X of 1859 enabled zemindars to fix monthly instalments for the rents payable by ryots; the twelve due dates for the twelve instalments afforded pretexts for vexatiously suing the ryot twelve times a year, and subjecting him to costs, which the Stamp Act of 1860 greatly enhanced. Section XIV of B. C. Act VI of 1862 now added to these costs the charge for the zemindar's pleaders. In this matter, *1stly*, unequal measure was dealt out; the ryot having but one suit has to pay 5 per cent. on its amount to his own pleader, and when he loses, other 5 per cent. for the zemindar's pleader, in all 10 per

cent., whereas the zemindar, if he loses, pays his own pleader nothing special for the particular suit, but a monthly or yearly allowance for all his suits, which becomes an infinitesimal percentage on any one suit; *2ndly*, the legislature overlooked that in suits *bond fide* for actual arrears of rent the employment of pleaders, instead of being recognised, might well be interdicted, as it was interdicted in Act X of 1859. The change did not elicit any discussion in the Council, but it ought surely to have been seriously challenged; for six years later, it was well observed in the same Council by Mr. Rivers Thompson (27th June 1868): "Suits which referred to the recovery of arrears of rent were generally of a character which, if standing by themselves, might be well cognisable by officers of the smallest experience in the mofussil. They involved no points of difficulty, but in the majority of instances simply depended upon a few questions of fact and a balance of accounts, which required neither judicial experience nor training to decide." Clearly, cases in which the zemindar honestly sues for arrears of merely the old amount of rent are of a kind in respect of which the idea or possibility of his engaging a pleader for their prosecution ought not to be entertained; the cases become complicated only by the zemindar's own act in mixing up questions of enhancement with simple facts of periods for which the old rate of rent is due, and of the amount due. But this—the zemindar's wrong-doing—was recognised as a fair ground for enhancing the cost and charges of a suit to the ryot, and thus increasing the proverbial difficulty or hopelessness of a poor person contending with a rich man in a court of law.

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Para. 5.

5. For the other alteration (para. 3, section II), by which Act VI of 1862 added to the ryot's burden, the justification urged was that ryots who refuse to pay their proper rent merely that they might obstruct or embarrass the zemindar, should be amerced in damages. Thus—

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I.—MR. E. H. LUSHINGTON (8th February 1862).

By the law, landlords were compelled to pay the Government revenue by a certain day, and no excuse was admitted; and if they could not collect their own rent, the case was very hard upon them.

II.—MOULVEE ABDOL LUTEEF (15th February 1862).

The Government admitted of no excuse for delay in the payment of its revenue by zemindars; it was but fair that it should afford to the

APP. XXI. latter all proper facilities for collecting *their* rents. The existing law was unequal to the necessities of the case. It was impossible to bring a whole population to Court; the Courts must be multiplied *ad infinitum* before it could be done with any prospect of speedy justice; and if it were possible, so great would be the expense, inconvenience, and delay to the zemindar of collecting rents in this way, that he would find himself a great loser in the end. He could not long go on collecting thus, and his zemindary might be sold by the Collector before he had got execution of his decrees.

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Para. 5, contd.

III.—BABOO RAMAPERSAUD ROY (15th February 1862).

(a). At present the Government fixed a day for zemindars to pay their *quota* of the revenue, and if they did not pay on that day, their lands were liable to sale. Why should landlords not have the same facilities afforded them for collecting their rents? He did not mean to say that the same summary process should be left in the hands of the zemindars; but, under proper safeguards, a facility might be afforded to them similar to that enjoyed by the Government. * *

(b). What measure, he asked, would work greater success than the certainty of losing one's tenure if the rent was not paid before the date of the decree? And, after all, this would be simply a partial application of the remedy which had been attended with complete success in the analogous case of Government revenue.

(c). For these reasons he did not think the proposed remedy a complete one; and he thought that, if they were to legislate on the subject, they ought to avoid mere local, class, or special legislation, and to legislate for the whole country under all circumstances that might occur. He would suggest that, after a decree of Court, the zemindar should be at liberty to eject the ryot if he held on an unsaleable tenure, or to sell the tenure if it were saleable. Such legislation would, he had no doubt, give universal satisfaction. * * He would only again repeat that the real remedy which the case required was to make the remedy of the landlords analogous to that possessed by the Government against them.

IV.—SIR CECIL BEADON (15th February 1862).

(a). He, the President, thought that the provision for penal damages was entirely a right one. It was fully a year since he recommended a similar provision to the late Council. Why it was not carried into effect he did not know, for it appeared to him to meet with very general approval. There were certainly objections raised to it by some, of the same character as those which he had heard¹ to-day. Objections were felt to the introduction of penal damages as contrary to ordinary principles; but looking at the position of the zemindar, looking at his liability to forfeit his estate if he failed on a fixed day to pay his quota to the revenue, he (the President) thought that they were bound to give him every facility for realising his rents. They knew that in certain places the zemindar experienced great difficulty in getting in his rents, and they were bound to

¹ Not reported in the proceedings.

give him every assistance, and that, he thought, they were doing by the introduction of penal damages where the zemindar was forced into Court to obtain his lawful demand. * *

(b). In a great many of the cases of arrear, it was found that the arrear arose from more being demanded than was admitted to be due, and from less than was demanded not being accepted. In such cases, where too much had been demanded, there was no ground for penal damages.

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6. In these extracts there are three main assertions, *viz.*—

1st.—That the zemindar should have the same facilities or means as the Government of realising his rent.

2nd.—That the ryot should be coerced into paying his rent by penal damages.

3rd.—That it is monstrous that the rents throughout Bengal should be realised through the agency of Revenue or Civil Courts.

7. Respecting the first of these statements, it may be observed that (*1st*) the Government limits its demand to an amount which is well known and undisputed, whilst the zemindar in most cases combines with his demand for actual arrears a claim to enhanced rent; (*2nd*) the revenue payable to Government by the zemindar is only the same amount now as in 1793, whilst the rent paid in the present day to the zemindar by the ryot is five or tenfold the amount of rent in 1793, and in many cases even more than tenfold; (*3rd*) the Government takes its revenue from the zemindar four times a year; the zemindar, though enjoined by the Regulations of 1793 to collect only when crops are reaped and sold, takes his rent from the ryot in monthly instalments, or twelve times a year.

8. Respecting the other two statements, it may be observed that they are very sad if true. In no other part of India is rent realised under coercion of penal damages or (except an infinitesimal percentage) through the Civil Courts. If such things happened elsewhere as are alleged of Bengal, the local Government would feel self-convicted of heavily assessing the ryots beyond their ability to bear. The ryots in Bengal are not less honest than those in other parts of India; it was testified of them in the *Ayeen Akbari* that in Akbar's time they waited not to be asked for rent, but spontaneously brought it to the treasuries (Appendix VI, para. 2, IVc.); it cannot be that they have become demoralised under British rule, for has it not been complacently said that the people of India are happier under British than under Native rule, if only they knew their own real good? It must

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Para. 8, contd.

APP. XXI. be, then, that the assessment on the Bengal ryot is more grievously burdensome under British rule than it was under Akbar. In other words, the justification of the increasingly burdensome rent laws is that they are needed, not for enabling the zemindar to pay a Government revenue which is the same as in 1793, out of a ryot's rent which is often tenfold the amount in 1793, but for enabling numerous middlemen, who, some years since, were styled curses of the country, to scramble for the unearned increment which to the last pie they would squeeze from the ryot. On the 6th June 1868, in the Bengal Council, the Advocate-General observed—

It was suggested to him that there were estates in which there were so many successive under-tenures carved out of the estate, that in many cases the under-tenant might not be able to ascertain the names of all the holders between himself and the immediate recorded proprietor of the estate.

9. The Bengal Council passed Act VII of 1868 in enlargement of the Sale Law, Act XI of 1859, and Act VIII of 1869 in continuation of the Rent Law, Act X of 1859; but the first-mentioned Act (VII of 1868) left intact the classes of tenures that were protected by the old law from enhancement of rent by the auction-purchaser, and the second Act, (VIII of 1869) transferred rent suits from the Revenue to the Civil Courts, without making any change in the substantive revenue law: the grounds for enhancing rents, as presented in Act X of 1859, were accordingly retained in Act VIII of 1869.

10. But though the law was not changed, the spirit in which it was applied by the Courts was perhaps changed by the transfer of rent suits to the Civil Courts; as observed by Mr. H. L. Harrison, Collector of Midnapore (30th June 1876)—

Under Act X of 1859, the Revenue Courts, as a rule, granted enhance-ment easily; and seeing this, zemindars generally allowed rights of occupancy to be acquired readily. The Civil Courts have reversed the situation under Act VIII of 1869 (Bengal Council); but in most cases the occupancy has been acquired, and there is no room for further fighting; at any rate, I know of no estate in this district in which a struggle to acquire or to defeat occupancy rights is going on.

It did not occur to Mr. Harrison that the calm in Midnapore was probably the exhaustion of ryots dead-beaten in the period during which the Revenue Courts readily enhanced rents, and, by changing the rate of rent, destroyed a large class of occupancy rights.

11. The real history of the changes in the relations between landlord and tenant from 1859 to 1875 must be sought in the records of the Civil and Criminal Courts. If the suits, and the criminal prosecutions instituted in each sub-division of a district, were to be classified, *1st*, under each zemindar, *2nd*, against each ryot, and the nature of the suits and offences were ascertained, they would show, as nothing else can show, how, in the brief period of fifteen years from 1857 to 1871, the status of the agricultural classes came to be so completely changed that, whereas in 1857 the mass of the ryots were khoodkashts, who were entitled to occupy at ancient established pergunnah rates (Appendix XI 8, paras. 13 to 15), in 1871-72 it was stated by the Bengal Government that the mass of occupancy ryots in that day were the creatures of Act X of 1859 (Appendix XIII, para. 6, section 1 *d*).

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12. To these creatures a lot like that of the ryots in the Madras and Bombay Presidencies, where their assessment is fixed for thirty years, would have been welcome; but by favour of the law, the zemindars and middlemen reserve the power, or seek the opportunity, of enhancing the ryot's rent every three or five years, or so. Mr. E. G. Glazier, Collector of Rungpore, observed (16th August 1876)—

In the largest estate in this district, where enhancement has been pressed with a vigour and a ruthlessness seen nowhere else, there is a well organised system of making all ryots take short leases of one, three, or four years' duration, and the effect is officially reported by the sub-divisional officer to be that numbers who had occupancy rights have thereby lost them through ignorance of the law, and now the occupancy ryots do not number more than one-tenth of the whole body. In my last Administration Report I referred to a somewhat similar state of things which had occurred in the south of the district.

13. The unsettled feeling kept alive by these frequent enhancements of rent continued unchecked by any alteration of law until 1871. In that year the District Road-cess Act X of 1871 (Bengal Council) was passed. It had no direct connection with the subject of landlord and tenant; but one of the provisions for collecting the road cess has had an important influence upon the enhancement of rents. In explaining the Road-cess Bill, Mr. Schalch observed—

I. Another object was to ensure the correctness of the returns, which was proposed to be done in two ways, *first*, by requiring that no zemindar or tenure-holder should be entitled to sue for more rent than might be entered in his return, these papers being capable of being used

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Para. 13, contd.

II. Where there were tenants holding certain rights of proprietorship, or tenants with rights of occupancy, the zemindar would be careful how he falsified the return, because in these cases he would be obliged to have recourse to the law to enforce his claims.

III. But undoubtedly the case was different with the great mass of cultivators, who were mere tenants-at-will; the zemindar there, having power to oust the tenant at the close of the year, would seldom have recourse to the law courts for recovery of rent, and would, therefore, not be deterred from giving false returns by the fear of affording evidence against himself. We allow that there is this difficulty, and we are prepared to face it rather than do away with the key-stone of the structure of the Bill, namely, what we may call voluntary valuation, by which we endeavour, as far as possible, to assess each man on his own valuation, and thereby avoid the necessity of having any separate assessing establishment.

Accordingly, in section VII of the District Road-cess Act, it was enacted—

III. From and after the expiry of three months from the service of any such notice, or any extension of such time under the provisions of the section next preceding, every holder of an estate or tenure, in respect of which such notice shall have been served, shall be precluded from suing or recovering any rent in respect of any land or tenure which shall be proved not to have been included in the return lodged by him, or in respect of which no return shall have been lodged as aforesaid or valuation made by the Collector, and from recovering rent for tenures subsequently created or in excess of the sum mentioned in such return, without proof of the creation of such tenure or enhancement subsequent to such lodgment.

Enhancement of rent.

14. On the imposition of the road-cess, some zemindars endeavoured to recover their portions of the cess by an extra impost or cess on the ryots; this attempt the latter resisted: and the steps they took for resisting it taught them that, under the foregoing provisions for the collection of the road-cess, they were exempted from payment of any cess whatever, beyond the amount of rent entered by the zemindars in their returns under the Road-cess Act. On this point the Collector of Tipperah explained (26th July 1876)—

The principal grounds of dissatisfaction between landlords and their tenants have arisen through the refusal of the latter to pay any more cesses. Now, the landlords had for years been accustomed to levy such cesses; and as long as they got them, did not care to enhance the old rates of

rent entered in their books as the rent payable by the tenants. The ryots refusing to pay cesses, the landlords are casting about how to enhance the very low rates of rent entered in their books, which only they can legally get decreed to them, the Courts, of course, putting aside anything of the nature of a cess.

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15. The unsettled feeling on the subject of rent since 1871 is described in the extracts paras. 9 to 13 of Appendix XII. On 24th September 1875, a Bill was introduced into the Bengal Legislative Council to "provide for inquiry into disputes regarding the rent payable by ryots in certain estates, and to prevent agrarian disturbances." Respecting the state of feeling between zemindars and ryots, which led to the Bill, there were the following accounts:—

I.—STATEMENT OF OBJECTS AND REASONS—(*Sir R. Temple's Minute, dated 16th March 1875*).

(a). For some time past there have been indications of renewed uneasiness and uncertainty here and there in some parts of Bengal, more especially Eastern Bengal, in the relations between landlord and tenant, particularly touching the rates of rent. I say renewed, because it will be in the recollection of all who are conversant with these affairs, that there were troubles of this sort in 1873, which showed themselves markedly in the Pubna district.

(b). There are occasionally complaints on the part of ryots and on the part of zemindars in some portions of the districts around Calcutta or in Central Bengal. At the present time, however, such complaints on both sides are more rife and more extensive in Eastern and South-Eastern Bengal. This may be illustrated by the following extracts from the Dacca Commissioner's Annual Report, dated the 12th September 1874:—

"Para. 26. District officers report that there are not wanting indications of very unsatisfactory relations between some landlords and their tenants on the question of rent. The landlords see the ryots profiting largely by the enhanced value of the produce of what they regard as their property, and they desire, not unnaturally, to intercept some portion of this increased return some way or other; the action taken by the authorities against the levy of illegal cesses leads them further to desire to place this demand on the safe footing of higher rents."

The Annual Report of the Commissioner of Chittagong, dated 4th September 1874, contains the following passage:—

"Para. 62. In the Chittagong district, the relations between landlord and tenant are never very cordial; and the Magistrate reports one instance in which the purchasers (Hindoo zemindars and rice-traders) of a large estate, at a sale for arrears of revenues, have been unable to settle with the ryots without the assistance of the Collector, to whom the purchasers made application, through the Civil Court, for detailed measurement and record of rights, the tenants steadily refusing to point out their lands, or come to any terms. Of course the new proprietors want to enhance, and equally, of course, the tenants are opposed to any such proceeding."

APP. XXI. (c). Since these reports were written, agrarian troubles actually began to occur during January 1875 in the eastern portion of the Dacca district. A dispute regarding rent broke out between the zemindars and ryots, and threatened to lead to breaches of the peace. * * It is always difficult to forecast the line which an agrarian people may take, or what provocation might be given on either side. But the opinion seems gaining ground among well-informed persons, that if once any considerable trouble of this nature were to break out anywhere, the movement might spread to other places. In some localities the zemindars might get the upper hand, in other places the ryots. In some localities the strength of both parties might be nearly balanced, and might be equal to sustaining a contest for some time. All circumstances of this nature would either be altogether harmful, or else would do more harm than good.

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(d). In parts of Eastern Bengal there seems to be a disposition among the ryots to combine in something like leagues and unions. The object of such combinations may be various. If any success were obtained by these means, there is always a chance that ryots might begin to combine in refusing to pay rent, whereon the zemindars might try to collect it by force. The consequences of a combination with this object might be serious in the present state of Bengal. * *

(e). As yet no trouble has actually broken out since 1873; but, as just seen, something of the kind was very nearly breaking out quite recently, and, despite our efforts, may yet break out. And the apprehension of similar occurrences elsewhere in Bengal is, I believe, present to many thoughtful minds.

II.—THE HONOURABLE BABU KRISTODAS PAL (*24th April 1875*).

Honourable Members of this Council were aware that for some years past the feeling between the zemindars and ryots in several districts in Bengal had been far from what was desirable, and what ought to subsist between them; and in some cases this feeling had found expression in overt acts of disturbance. * * Baboo Kristodass Pal had some opportunities of knowing how things were getting on between ryots and zemindars in several districts; and he must say that, unless some measures were taken to promote peace and harmony between them, the tranquillity of the country might be endangered, and the Government called upon to take stronger measures than that now proposed.

In 1789 Lord Cornwallis felt sure that if the Government assessment were fixed for the zemindars for ever, they would cherish and protect the ryots. The Government assessment was the same in 1875 as in 1793; the ryots' rent in 1875 was tenfold that in 1793; yet the cherishing care of ryots by zemindars agitated the Bengal Government with fears of agrarian disturbances.

16. In 1793 there were old-established pergunnah rates, so well known that ryots held lands without pottahs or agreements, and so easily understood and ascertained that disputes

were referred to the Civil Courts. In 1875 Sir Richard Temple wrote, in the Statement of Objects and Reasons—

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“ that among the disputed cases the most important class will relate to economic and agricultural questions with which Civil Courts are not well fitted to deal. * * Matters pertaining to the profits of cultivation, the value of produce, the customary rents, and the like, will be argued out by opposing counsels; appeals may be laid, and decisions can be enforced only by the formal process of execution. * * The second ground of enhancement is the most difficult of all, as it involves questions whether the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot. These are purely economic and agricultural questions which cannot possibly be argued and discussed and attested in a Court of law with any advantage, or with any definite authority. And yet this is the very ground on which the most serious disputes are likely to arise, and is actually the ground on which the disputes in Eastern Bengal are now arising.”

17. It did not occur to Sir Richard Temple that these difficult economic questions have arisen solely from the extension, by Act X of 1859, to ryots in permanently settled Bengal, of irrelevant grounds of enhancement of rents which were mistakenly borrowed from the temporarily settled North-Western Provinces; and that these difficult economic questions were in striking contrast to the simple facts of old-established pergunnah rates with which the authors of the permanent settlement dealt, and on the permanency of which they relied for securing to the ryots the same enjoyment of the fruits of their industry which the fixing of the Government assessment for ever was to secure to the zemindars. The contrast between the simplicity of 1793 and the bewildering perplexity of 1875, which is no nearer a solution in 1879, illustrates how wide has been the departure from that permanent settlement in which the faith of Government was as solemnly pledged to the ryots as to the zemindars.

18. Unconscious of this variation by the zemindars of the conditions of their contract in the permanent settlement, Sir Richard Temple proceeded—

(a). The contest must be upon the second of these grounds of enhancement, namely, that the value of the produce and the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot. This ground involves general considerations regarding the past and present state of Eastern Bengal: the progress of trade, especially the export trade; the range of prices on the one hand, and on the other hand the expenses of cultivation; the just share of the ryot in the profits of cultivation; the general tendency of rural custom, and the like. It is not easy to imagine matters less suited for discussion in the law courts when the people are becoming angry on both sides.

APP. XXI. Manifestly the proper persons to bring these urgent matters to a just and peaceful issue are the Collector and his officers. It should be their business, after a general review of the circumstances, to arrive at a conclusion as to whether the 12-annas to 14-annas rate per beegah ought to be maintained as the ryots say, or to be raised to 18 to 20-annas as the zemindars say; and if not, then whether it should be raised to something between 14 annas and 18 annas. * *

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Para. 18, contd.

(b). I recommend that the local Government should have the power, upon good cause shown, of appointing the Collector or other officer to settle, authoritatively, disputes of the nature above described, and to enforce awards. * * The Collector would, after due enquiry, and after hearing both parties, fix the rates of rent according to the circumstances, and with such guidance as the existing laws might afford him, and decide suits for rent, both current dues and arrears. The Collector should also have the power of fixing the disputed rents for a short term of years, so that there might be no chance of need arising for again exercising interposition within a reasonable period.

19. It did not occur to Sir Richard Temple to ask himself whether these enquiries by the Collector would not be just eighty-five years too late. The proper time for their institution was before the formation of the decennial settlement. Had the enquiries been made then, they would have secured to the Government a large amount of revenue from concealed cultivation in zemindaries, which was not included in the revenue assessed at the permanent settlement, owing to frauds that were at length condoned in Regulation II of 1819. They would also have ensured a proper record of ryots' rights and of their permanent rates of assessment. But the Government of 1789, not to harass the people, and from a misplaced confidence in the zemindars of that day, abstained from such enquiries, thereby sacrificing a considerable revenue. That which the Government would not do for the advantage of the State in 1789, it was required in 1875 to do for the benefit of zemindars, who, retaining a rental six to tenfold that of 1793, yet paid only the same assessment as in that year. For them it was required that every ten years, or more frequently, Government officers should assess ryots so as to secure for zemindars the unearned increment which belongs to ryots (Appendix XVI, para. 28), and should measure ryots' lands, though Sir John Shore had said :¹ "In some parts of the country, I under-

¹ Sir John Shore's statement is corroborated by the Committee of Revenue in 1786, who observed : "The Committee, adverting to the nature of a zemindar's office and the deed by which he is vested with the superintendence and collection of the revenues of a zemindary, are of opinion that he does not derive a right from either of making a hustabood of a zemindari by measurement, or of changing the mode or rate of collecting the revenue without the previous permission of Government" (see also Appendix IX, para. 7, IIc).

stand that the zemindar is by prescription precluded from measuring the lands of the ryots whilst they pay the rents according to the pottah and jumma bundi;" though section 60 of Regulation VIII of 1793 allowed a general measurement of the pergunnah only for the purpose of equalising and correcting the fixed assessment, and though zemindars themselves were exempted from assessment on land fraudulently included in their zemindaries, Government in Regulation II of 1819 having enacted—

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"that all claims by the revenue authorities on behalf of Government to additional revenue for the lands which were at the period of the decennial settlement included within the limits of estates for which a permanent settlement has been concluded, whether on the plea of error or fraud, or on any pretext whatever, saving of course the case of lands expressly excluded from the operation of the settlement, such as lakheraj and thannadary lands, shall be and be considered wholly illegal and invalid."

20. The Bill was passed into "law on 10th July 1876, as Bengal Council's Act VI of 1876, or an Act to provide for inquiry into disputes regarding rent, and to prevent agrarian disturbances." It was to be in force for only three years, and was to take effect in only particular tracts to which the Government might extend the Act by an order in the *Calcutta Gazette*. During the progress of the Bill, discussion was raised on some points of permanent interest. Babu Kristodas Pal (24th April 1875) observed: "Many conflicting decisions had been passed by the High Court upon the proportion which the rent should bear to the produce of the land; and from the day Act X of 1859 was passed to this day, the question of rate of rent remained unsolved." To help its solution, Babu Kristodas Pal suggested Mr. Gladstone's three courses: "One was this, that the gross produce of the land should be divided between the zemindar and the ryot in a definite proportion, that was to say, three-fourths going to the ryot and one-fourth to the zemindar as rent." In suggesting this, Babu Kristodas was faithful to the traditions of the British Indian Association (Appendix XIX, para. 26, vii). The following comments were passed on the suggestion:—

Fair and equitable rent.

I.—MR. C. STEVENS, COLLECTOR OF NUDDEA (*8th May 1875*).

It is obvious that the uniformity of the rule is merely superficial, since the profits would vary with every kind of crop sown. It is manifestly unfair that the landlord should obtain as large a share in the gross produce of a crop requiring high cultivation, such as tobacco, as he does in the case of a field of kolai, in which the ryot's labour is trifling

APP. XXI. in comparison. It seems plain that the landlord ought to expect to receive nothing in the shape of rent until the cost of production of the crop has been paid for.

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Para. 20, contd. II.—MR. F. B. PEACOCK, OFFICIATING COMMISSIONER OF DACCA (25th May 1875).

(a). This suggestion looks a fair proportion enough; but any sudden order that the produce of the land should be so divided in this district might lead to a very serious result. Here, from figures prepared some short time ago by a very old and experienced Deputy Collector, the zemindar's share is put down at one-twelfth to one-fortieth of the *net* profit, according to the crop grown.

(b). As will be seen from the Collector's report, the highest rents in the district are those paid in Vikrampore, where it is computed that the landlord's share of the profit does not exceed one-sixteenth. In Fureedpore I am given to understand that, speaking roughly, the rent paid to the zemindar represents one-fifth to one-eighth of the gross produce, which approaches that suggested by Babu Kristodas Pal; but the wide difference observable between two adjoining districts shows how difficult it would be to lay down any one rate for all the districts of Bengal, or even of a province of it.

III.—MR. W. H. D'OYLY, COLLECTOR OF RAJSHAHYE (17th May 1875).

(a). I would warn the Council not to accept the theory that quarter of the money-value of the produce should go to the zemindar as rent. The legal rent of land (*i.e.*, exclusive of illegal cesses) is seldom anywhere near quarter of the value of the produce, and no ryot could afford to pay so much. The annexed statement shows that the rent paid by the ryot varies from one-tenth to one-seventh of the value of the produce of the best quality lands for, variously, dhan, sugarcane, wheat, mulberry.

(b). (In a subsequent letter, dated 9th July 1876).—In my letter No. 795, dated 31st July 1875, I stated my opinion that the zemindar should not in any case be allowed more than one-eighth of the gross annual produce, and I gave my reasons, which it is not necessary to recapitulate. It will be seen from the present letter that the ryots themselves seem to think that that proportion is fair to occupancy ryots.

IV.—BURDWAN DISTRICT.

(a).—COLLECTOR (24th December 1876).

Rents in this district are very high at present, being *often*, according to Hunter's Statistical Account (page 72), even half the value of the gross produce.

(b).—BABOO JOYKISSEN MOOKERJEE (8th January 1877).

In the Hooghly, Burdwan, and other districts, the landholders get on an average half the value of the gross produce as their rent; and in those cases in which rent is paid in kind, the landholders' share of the gross produce varies from 7 to 9 annas, although the costs of cultivation are entirely paid by the ryots.

21. Babu Kristodas Pal suggested also a second mode of **APP. XXI.** determining the fair and equitable rent payable by an occupancy ryot. His suggestion (24th April 1875) was—

FAIR AND EQUITABLE RENT.

PART. XI.

I. That the rate of rent should be fixed on the competitive rate prevailing for the village or pergunnah. The competitive rate meant the rate of rent at which the jotedars or farmers, or other holders of land, let the land to cultivating ryots. There was a competition for land by the cultivating ryots, and the rent they paid was called the competitive rate. Taking that as the rate of rent, the rate for an occupancy ryot might be fixed at such a rate as would secure him the benefit of the tenant-right he enjoyed, and this could be done by allowing him a deduction at a certain percentage from the competitive rate so formed and determined. This suggestion was based upon the principle followed in the Oudh Rent Act. According to that Act the occupancy ryot was liable to pay the rate of rent, *minus* 12½ per cent. which a tenant-at-will paid.

II. Sir Richard Temple (25th March 1876) approved of the suggestion—

This was the very rule, and absolutely the very principle, on which all rents of occupancy tenants were adjusted in Northern India, in the Punjab, in Oudh, and in fact throughout Northern India. He ventured to say that there was no part of India in which this question was so minutely studied as in Northern India, and there was no province in which the variety of tenures was so great as in Northern India. You took first of all the average of what was called the pergunnah rate, which was what the landlord could get in the market in the shape of rent from a tenant-at-will. That was taken as the basis of the adjustment, and favourable rents were all calculated on that basis. One man had 5 per cent. advantage as compared with ordinary rates, another man had 10 per cent., another had 25 per cent., and some had even 50 per cent. Honourable Members who had served in that part of the country must be aware of this; and if the Council would consult the Punjab Tenant's Act, they would see exactly the same principle is laid down there.

III. The British Indian Association, in a letter dated 10th March 1876, improved on the suggestion—

(a). The majority of the present occupancy ryots having been in the position of tenants-at-will, the Committee submit that it would meet the ends of justice if an allowance were made to them in consideration of the occupancy rights conferred upon them by the legislature on the principle which has been recognised in the Oudh Rent Act.

(b). Under that Act, the rent of the occupancy ryot is fixed at 12½ per cent. less than the rent paid by the tenant-at-will. The Committee, however, are of opinion that this deduction is too low. They would recommend one-fourth, or 25 per cent.

(c). A prosperous tenantry is a source of strength to the zemindar, and the Committee hold that enough ought to be allowed to the occupancy ryot to enable him to pursue his industry with reasonable satisfaction.

(d). The proportion of one-fourth of the difference to the ryot, and three-fourths to the zemindar, in their opinion, would be fair and equitable.

APP. XXI.

FAIR AND EQUITABLE RENT.

Para. 21, contd.

(e). The Committee do not think that it will be difficult to ascertain the competitive rates as a rule. Where the land is let out to a tenant-at-will by the landlord, or by the person in receipt of rent direct, it may be easily ascertained.

(f). Where, however, the lands are held wholly by occupancy ryots, the competitive rates may be ascertained by reference to the rate of rent paid by "koorfa" ryots cultivating under occupancy ryots, or "jotedars." * * The Committee have adopted the principle of the competitive rate, because it is a fair test of the value of land. It is a sure indication of the share of the produce of the soil which the cultivating ryot usually receives; and where it is low, from whatever cause, the occupancy rent, as a rule, is also low.

If "a prosperous tenantry is a source of strength to the zemindar," then are zemindars weak-kneed through the greater part of Bengal and in Behar. The promise to the ear in extracts (a) and (b) is broken, however, to the hope in extracts (e) and (f), in the latter of which the abatement of one-fourth is allowed on the rent of koorfa ryots, who pay one-half the produce. The rent question is humorously solved in the statement that the competitive rate for the occupancy ryot is the rent which he obtains from his sub-ryot.

22. Competition lowers the rent when, from an abundance of waste land, zemindars compete for ryots. Competition raises the rate when (as in England) the farms and (as in many districts of Bengal) the ryots' holdings are fewer than the applicants for them. But there is this difference, that in Bengal the competition of ryots, who can do nothing else if they do not cultivate, produces a cottier tenantry; whereas in England, however great the number of competitors for a farm, the rent is limited by the rate of interest obtainable in other pursuits or investments for the farming capital of the competitors.

23. In the discussions of the competitive rate suggested by Babu Kristodas Pal and the British Indian Association, and of the related question of prevailing rates of rent for the same classes of lands and of ryots, the following remarks were offered:—

I.—PERGUNNAH RATES.

(a).—SIR R. TEMPLE (18th April 1876).

Still the section leaves untouched the deeper, the broader question as to what, in reason and justice, ought to be the prevailing rate for occupancy ryots in any district or division of a district; nor is any test afforded in any part of the law for the decision of this question: yet this is the question which agitates the thoughts both of zemindar and ryot throughout the country.

The authors of the permanent settlement in 1793 required of the zemindars that they should take from the ryots no more than the established pergunnah rates. In 1876 "the question as to what, in reason and justice, *ought to be* the prevailing rate for ryots," though completely subverting a fundamental stipulation of the permanent settlement, was held to be no departure from that compact, in which the faith of Government was as solemnly pledged to the ryot as to the zemindar.

APP. XXI.
PERGUNNAH
RATES.
Para. 23, contd.

(b).—COLLECTOR OF DINAGEPORE (29th June 1876).

(1). Dinagepore was almost all included in the Raj of the name, which was held under khas management by Mr. G. Hatch, the Collector, when the decennial settlement was made. He recorded the rates of rent in the district, and they are looked upon as unalterable to this day. Mr. Hatch fully entered into the spirit of the Regulations, which was, I believe, elsewhere disregarded, and in his settlement fixed the demand of the zemindar from the ryot, as well as that of Government from the zemindar, in perpetuity for ever.

(2). This principle is recognised in the district; and although the ryots have from time to time paid cesses and mathoots, Mr. Hatch's *nirikk* is, both by zemindar and ryot, regarded as unalterable, and zemindars do not attempt to enhance rent, except on the ground of lands held in excess.

(c).—COLLECTOR OF BOGRA (15th July 1876).

In the suits for enhancement, the zemindars in this district generally are striving to obtain merely what they have been in the habit of receiving as rent and customary cesses in an amalgamated form. In one instance, where the villagers clamoured against what they called an "*abwab*" (the meaning of which word I found they were unable to explain to me), I found that the money of which they wished to evade the payment was an enhancement of 4 annas in the rupee, which they had agreed to pay 42 years before (*i.e.*, in 1832), and had cheerfully paid till the recent disturbances in Pubna led to the widely-spread belief that the Queen was going to resume all revenue-paying estates from the zemindars and let them to the ryots at reduced rates.

The Regulations of 1793 prohibited the levy of fresh *abwabs*; but the Collector thought it quite proper that zemindars in 1832 should levy such *abwabs*.

(d).—ZEMINDARS OF EASTERN BENGAL (September 1876).

The gradual rise of rents took place in three different shapes: (1) regular increased rates of rent; (2) supplementary payments in addition to regular rents, in the form of *abwabs* or cesses, which used to be

APP. XXI. paid, because ryots preferred to keep those additional payments distinct from regular rents, in order that, if produce ever fell back to its original low prices, those payments could be easily discontinued; and zemindars did not object to the arrangement so long as the increased payments were actually made.

PERGUNNAH
RATES.
Para. 28, contd.

(e).—COLLECTOR OF TIPPERAH (26th July 1876).

(See passage quoted in para. 14.)

(f).—MR. E. LOWIS, COMMISSIONER, CHITTAGONG DIVISION (19th August 1876).

(1). The permanent settlement was made on the basis of the old collection papers, and the zemindars were instructed to consolidate the *assul* and *abwabs* into one sum, which was to be the future standard, further cesses being absolutely forbidden. These rules were never enforced; the zemindars continued to levy cesses, while *the people cling to their assul* as they had done, and now matters have come to a crisis, for the villagers find that they will be supported in resisting payment of cesses; they are therefore doing so, and refusing to allow the zemindars any share in the increased value of produce, while the zemindars are calling out that they cannot obtain that share in the profits derivable from land which is their due. * *

(2). Under native rule it is not to be supposed that the produce of the cultivators was weighed and ascertained every year, or that the yearly amount payable in money instead of grain was always varying,—a state of things which any nice adjustment of the State dues would naturally lead to. On the contrary, it very soon came to be known how much on an average a particular locality yielded, and a “nirikh,” or rate, soon came to be established as that at which rents in the neighbourhood were to be calculated, and *at every fresh measurement and investigation into the resources of the land, these rates were raised.*

Mr. Lowis erred in the passage which is italicised. Sir John Shore stated distinctly that in the periodical revisions, land brought into cultivation since the preceding revision was assessed at the old pergunnah rate, and that the old rate for the old lands was not disturbed. Mr. Lowis himself testifies that above eighty years after the decennial settlement the people clung to the old pergunnah rates.

(3). When the regular system (Mr. Lowis’ misconception of it has been just corrected) was abandoned for the arbitrary one of levying cesses in proportion to the “nirikh,” the people still clung to the original rates as the proper one, treating the *abwabs* as exactions not contemplated by the laws which they professed to be governed by. At the time of the permanent settlement some of these rates had become merged in the *assul*, thus raising the “nirikh” improperly, but most of them were still levied distinctly.

(4). After our accession to the Dewani, attempts were made to ascertain the resources of the land, but with no great success, since the machinery, through which alone such information could be obtained, had

been allowed to fall into decay. However, an attempt was made, a fresh assessment imposed and declared permanent, the zemindars being debarred from any longer levying cesses, but allowed to enrich themselves by the future improved condition of agriculture. This fresh assessment, based on consolidation of the *assul* with such cesses as were not excessive, raised the "nirikh," and such nirikh should have continued in force until raised in a legitimate manner after a measurement and ascertainment of the resources of the land. This was not done, but rents were raised on various illegitimate methods, as before.

(5). The *assul*, however, has never been lost sight of; and, so far as my experience of Lower Bengal goes, the *pergunnah*, or *dosohala*, "nirikh" is known to all,—the rate, that is, which was fixed at the time of the permanent settlement as fair and equitable, *with regard to the then value of the produce.*

The words in italics are not supported by the Regulations of 1793 as regards the fixed money-rents of that day.

(g). It appears from the preceding extracts that in the present day, in various districts of Bengal, the old *pergunnah* rates of 1793 do exist, and that by their side exist *abwabs* old and new, of which the new or fresh *abwabs* were peremptorily prohibited by the Regulations of the permanent settlement. In these districts, therefore, at any rate, means exist of fulfilling the engagements in which the faith of Government was as solemnly pledged to the ryot as to the zemindar.

II.—KOORFA RYOTS (*or sub-ryots, or the ryots of ryots*).

(a).—COLLECTOR OF DINAGEPore (29th June 1876).

(1). Enhancing rent on the ground of its being below what other neighbouring ryots paid under similar circumstances, could occur only by comparing jotedars with *koorpha*, *adhiyar*, or *chaukrani* ryots, and this would be repugnant to the customs of the district. These last-mentioned three classes of ryots generally hold under the jotedars who pay rent to the zemindar, and often pay him in money or in produce three times what he pays the zemindar. They are the actual cultivators of the soil, and what they pay represents the rent which can by competition be obtained for the land according to the ordinary rules of demand and supply.

(2). This is, however, complicated by the fact that the jotedar is frequently sufficiently wealthy to be a money-lender, and, either by absolute lending or by some *adhiyari* conditions, finds capital for cultivation, supplying seed, corn, and maintenance, and sometimes cattle and ploughs.

(3). The rent, therefore, becomes mixed up with the question of interest inextricably, and what the jotedar receives really affords no criterion of what the zemindar ought to receive.

¹ The laws did not provide for any enhancement whatever.

APP. XXI. (4). The cultivator cannot afford to pay as much rent to the zemindar as he pays to the jotedar, because the latter practically takes the risk of bad seasons, and this risk would fall on the cultivator if he paid an equally high rent to the zemindar.

KORFA RYOTS.

Para. 23, contd.

(b).—COLLECTOR OF RAJSHAHYE (9th July 1876).

It is not generally the custom in this district to demand from a ryot who pays his rent directly to the land-holder, although his right of occupancy has not accrued, a rate of rent higher than that paid by occupancy ryots; so to find the competitive rate, the rate paid by a khurfa ryot should only be taken as the basis.

(c).—COLLECTOR OF BURDWAN (29th July 1876).

(1). The half-produce rents paid by the korfa or under-tenants.

(2). In view of the particular circumstances of this district, I believe it to be quite possible that in some cases the Moonsiffs may interpret the korfa half-produce rate to be the "average rate of rent paid by non-occupancy ryots." And in support of my belief that this interpretation is a possible one, I beg to refer to para. 10 of the Minute, where the British Indian Association remark that, failing other evidences, "*the competitive rate may be ascertained by reference to the rate of rent paid by 'korfa' ryots cultivating under occupancy ryots.*" That, if I am not mistaken, is a plain warning of what the zemindars' tactics will be in these cases. When korfa ryots cannot pay, they run away, and thus the high rents paid by them mean bad security. The occupancy ryot is a man of substance, and ought not to be compared with the korfa ryot.

(d).—MR. C. T. BUCKLAND, COMMISSIONER, PRESIDENCY DIVISION (31st August 1876).

I find the great body of intelligent natives here (not being zemindars) firmly impressed with the conviction that, according to the custom of the country, the only ryot who can be in any proper sense rack-rented is the *korfa ryot*, the sub-tenant of a ryot, who is entitled to a bare subsistence and no more. Other ryots, though in respect of some lands held by them they may not have acquired a legal right of occupancy, are still entitled to hold at the same rates as their neighbours, and do, in fact, so hold. The proposal of the British Indian Association that we should in case of doubt fix occupancy by any direct reference to *korfa* rates, is looked upon as revolutionary, and would not be tolerated, unless, indeed, the margins allowed were of the most liberal description.

(e).—SIR W. HERSCHEL, LATELY COLLECTOR OF HOOGHLY (1st September 1876).

(1). There is in every village a competitive rate, very different, indeed, from the village rate of rent, and I greatly fear that this is the competitive rate on which the British Indian Association have so liber-

ally reckoned when they offer to give up 25 per cent.¹ of it. They may well do so, for it is far above the rate paid by a ryot, whether occupant or non-occupant. It is the rent in cash or kind paid or promised to a ryot—not by a ryot. It is very rare that any zemindar receives such rents. If he does, he does it because he likes to nestle down close to the soil here and there, and therefore preserves a piece of land in his own farm as a ryot, and, growing tired of the toil involved in looking after coolies, ends by resorting to this most jealous admission of a fellow-creature to an interest in the land, till the harvest is gathered, but no longer. The labourer so taken into partnership is no more a ryot than the old woman in my compound is owner of my cocks and hens, because I allow her to keep one chicken in every two she rears.

APP. XXI.
KORFA RYOTS.
Para. 23, contd.

(2). I am amazed to find the Association quietly referring to the rates paid by "korfa" cultivators as a basis. I can imagine the storm of controversy that would be raised if ever their suggestion were put into practice. There is no resemblance between the loafing young scapegrace of the village whose relatives insist on his earning his own meal, at least as a test of his honesty, or the broken-down old coolie who has neither wife nor children to support, and who probably sleeps in any shed he can find, or any other hard-driven or careless korfa cultivator on the one hand, and the ryot whose lands they plough on the other. There is not a zemindar in all Bengal who would dream of asking korfa rates from any decent man with a family who applied to him for a "palataka" ryot's holding. I defy any Court or Revenue Officer by any process of reasoning to satisfy the public that their inference from a korfa cultivator's rates to the rate payable by a ryot, occupant or non-occupant, is fair and equitable. The whole science of political economy would be exhausted in the preliminary questions.

(3). No doubt korfa, like every other word of the same import, shades off at some few places into "ryot," but in general, to become a ryot on his own land some day is the ambition of a korfa cultivator. He never hopes to be that on the land he is then cultivating. The tenacity of the ryot in keeping the korfa down is far greater than that of any landlord towards his tenants; and it is only when zemindars themselves admit the korfa and treat him as a ryot, that he becomes one on the land he ploughs as such. Subsistence allowance for one person is the usual thing that the korfa gets out of the soil, and the ryot has to bear the risks of season in the long run, though it may not be so in the contract.

(4). In any discussion that takes place, I trust it will be borne in mind that any reference to the rents paid to a ryot as a test of the sum which a ryot should pay to the zemindar, is launching on to a sea of controversy. It will not do to allow any reference to that class of cultivators as a guide, even if it be shown that in some places there are settled cultivators of that name. If there be, it is because the zemindar has voluntarily raised them to the class of ryots, who are tenants-at-will,

¹ I am not speaking loosely: it is the Association which does so. They speak at one place of giving up 25 per cent. of the whole, at another of giving up that proportion of the enhancement only. I seriously think they are willing to do either, as far as they have thought over the matter.

APP. XXI. with rights totally distinct from those of *korfa* tenants, as ordinarily understood; and it is as such, and not as *korfa*, that they should be described.

KORFA RYOTS.

Para. 23, contd.

(5). The competitive rate among tenants-at-will is the thing in quest; *korfa* tenants, or their corresponding class, are to be found everywhere in abundance, though scarcely known to the rent Courts otherwise than incidentally. Anything that appears to sanction a reference to their payments as a guide to the determination of rent by a simple rule, will completely change the position of the bulk of the agricultural population in Bengal.

(f).—JOINT MAGISTRATE, MYMENSING (*July 1876*).

Of course the objection would be obviated if it were easy to ascertain the competitive rate by reference to the rate of rent paid by *kurfa* ryots cultivating under the occupancy ryot or jotedar. In this district, the *metayer* system is not uncommon, half the produce being paid as rent by the ryot cultivating under a recorded ryotwari holder; but this would obviously be of little or no assistance in the determination of the competitive rent. On the other hand, in those cases where the rent is not thus paid in kind, the evidence of its amount would not be in the hands of the zemindar or other superior landlord; and when it comes to a question of enhancing generally the rates prevalent in any mouzah, the occupancy ryots would combine together, and would almost invariably enlist their sub-tenants on their side to withhold the necessary evidence. * * It would be an easy matter for them to make up a mass of evidence, documentary as well as oral, in order to prove rates according to their own caprice.

(g). Some ryots delight in painting zemindars in the blackest colours, imputing to the latter all that is done by their numerous gomashtah. In the preceding extracts many ryots are painted in the same colours, and with evident fidelity to truth, by gentlemen whose sympathies were with the ryots as a class. The extracts show that opportunity and circumstances make the main difference between zemindar and ryot; with this advantage in favour of the zemindar, that not being brought up in penury, his natural feelings would tend to showing greater consideration to his ryots than the ryot would show to his sub-ryot. One chief use of the extracts is to inculcate moderate views in the question of zemindar and ryot; another, to convey the lesson that the best state for the actual cultivator of the soil would be one in which he might be proprietor of his holding in fee simple.

III.—NON-OCCUPANCY RYOTS, OR PREVAILING RATE OF RENT.

(a).—SIR R. TEMPLE (*15th April 1876*).

(1). It seems to be admitted on all hands that rules will hardly be needed in the law regarding the determination of the rent of the non-

occupancy ryot; that may generally be left to mutual agreement between the landlord and tenant, and to adjust itself as prices and market rates adjust themselves. This rent rate of the non-occupancy ryot may be taken as the basis for determining the rent of the occupancy ryot.

APP. XXI.
Non-occupancy
Ryots, or Free
Holding Ryots, or
Rent.

(2). The proportion borne by the number of occupancy ryots to that of non-occupancy cannot be precisely stated; it is probably changing from time to time as tenants go on holding for more than twelve years and so acquire an occupancy status. Certainly the number of occupancy ryots represents a very large portion, perhaps the majority, of the whole tenantry of the country.

Para. 23, cont'd.

(3). Still there are quite enough non-occupancy ryots in every district under zemindars, sub-proprietors, and tenure-holders of different classes, whose rent rates will clearly indicate what the average amount of rent would be if adjusted in open market, without reference to any special rights or status which the tenant might have. There may be variations in such rent, or questions whether in particular cases the rent has been augmented up to a rack-rent or reduced for special reasons, and so on, but the average rent rates of non-occupancy ryots in each district or part of a district are, as I understand, well known and readily ascertainable.

By the Regulations of 1793, the ryot was to pay as rent the ancient customary pergunnah rate, the custom, perforce, being that established by the practice of the majority. Again, under Act X of 1859, when an occupancy ryot, *i.e.*, a ryot of the class of tenants who constitute the majority, is liable to enhancement of rent, the equitable rate to which his rent may be raised is that prevailing in adjacent lands for the same class of ryots;—yet in the foregoing extract the rent of the minority of ryots, that is, the non-occupancy ryots, was adopted as the prevailing rate of rent for determining that of the majority of ryots, *viz.*, the occupancy ryots.

(b).—MR. F. W. V. PETERSON, DEPUTY COMMISSIONER, JALPIGOREE (1st July 1876).

As a rule, non-occupancy ryots have not such good descriptions of land in their cultivation as occupancy ryots.

(c).—COLLECTOR OF RAJSHAHYE (9th July 1876).

The rates of rent of several descriptions of land in a pergunnah or part of a pergunnah have for some time been fixed by the zemindars, and both the occupancy and the non-occupancy ryots pay their rents at those rates. The rent paid by the occupancy ryot is, therefore, the same as that paid by the non-occupancy ryot. The reason is obvious—the zemindars do not allow any concession to occupancy ryots. They do not admit the right of such ryots. They call the lands of these ryots, as well as those of non-occupancy ryots, 'sursary jotes,' that is, lands from which the tenants can be ejected at their pleasure. They do

APP. XXI. not wish to make a distinction between the two kinds of ryots, and consequently take the same rate of rent from each.

NON-OCCUPANCY
RYOTS, OR PRE-
VAILING RATE OF
RENT.

PARA. 23, CONTD.

(d).—COLLECTOR OF BOGRA (*15th July 1876*).

The third objection is that the rates paid by non-occupancy ryots would be always found, by judicial enquiry, to be exactly as stated by the landlord, who can always produce the non-occupancy ryots on his side by the remission of the balances due, and other slight favours. The zemindar has the non-occupancy ryot in his power. Further, such an average, if fairly obtained even, would be misleading. The average should only be taken of the rent paid by non-occupancy ryots for land of the same description as that whose rent is to be enhanced, otherwise the same injustice would be perpetrated as was done by the old pergunnah rate, which was frequently supposed to be a rate fixed by custom for all lands, instead of varying according to the description of the land.

(e).—COLLECTOR OF BURDWAN (*29th July 1876*).

There is a consensus of opinion that the cash rates paid by men of the ryot class (pykasht ryots) and others, who have held less than 12 years, are very little higher than the rates paid by occupancy ryots. A scrutiny of the rents now actually being paid in 24 villages, in eight pergunnahs, proved that the non-occupancy rates hardly ever exceeded the occupancy ryots' rates by more than 8 annas a beegah, and often not so much. An occupancy ryot holding at 3 rupees a new beegah, where the non-occupancy rate was Rs. 3-8, would, under the law, have his rent reduced to Rs. 2-13; and hence abatement suits would be numerous, and the law would very soon have to be altered again.

(f).—MR. LARMINIE, COLLECTOR OF BANKOORA (*8th August 1876*).

Where land is much sought after, non-occupancy rates are very high, and if the circumstances which led to the increased value of the land are of comparatively recent date, there is very large margin between non-occupancy and occupancy rates. The increase of rent demandable by the landlord would be so great as to make a serious and sudden change in their income, and would lead to intense dissatisfaction. On the other hand, if the difference between the two classes of rates be not small, the landlord would suffer a sudden decrease of his income, perhaps amounting to 20 per cent.

(g).—MR. D. R. LYALL, COLLECTOR OF DACCA (*28th August 1876*).

There is a fallacy in the proposal that the rent of the occupancy ryot should be 25 per cent. less than that of the non-occupancy ryot. The fallacy is the belief that the occupancy ryot pays less than a non-occupancy ryot. The contrary is the case here now; and the contrary was the case at the time of the permanent settlement, as the following extract from page 64 of vol. ii. of Harington's Analysis shows:

The extract is from the report of Messrs. Anderson, Crofts, and Boyle, APP. XXI. who were in 1776 appointed Commissioners to collect materials for the ensuing settlement, and whose statement carries great weight. They say, speaking of ryots, "the most general distinction, however, with respect to their tenures is that of koodkasht and pykasht. The name of koodkasht is given to those ryots who are inhabitants of the village to which the lands that they cultivate belong. *Their right of possession*, whether it arises from an actual property in the soil or from length of occupancy, is considered stronger than that of other ryots, and *they generally pay the highest rent for the lands which they hold*. The pykasht, on the contrary, rent land belonging to a village in which they do not reside. They are considered as tenants-at-will, and having only a temporary and accidental interest in the soil which they cultivate, will not submit to so high a rent as the preceding class of ryots." What was the case in 1778 is the case still in many parts of this district, and in no part does the non-occupancy ryot pay more. He pays the same in all parts of the district where there is not much waste land, and he pays very considerably less in the less highly cultivated parts.

NON-OCCUPANCY
RYOTS, OR PRE-
VAILING RATE OF
RENT.

Para. 23, contd.

(h).—MEMORIAL OF ZEMINDARS OF EASTERN BENGAL (September 1876).

(1). In Eastern Bengal, generally, there are very few instances of regular non-occupancy ryots who made periodical settlements of good land upon rates (higher than those paid by occupancy ryots) determined by competition and mutual agreement at the commencement of their periods of settlement. This, your memorialists believe, is the class of ryots meant by your Honour when speaking of non-occupancy ryots paying competitive rates of rent.

(2). The non-occupancy ryots of this quarter, those that take up holdings vacated by occupancy ryots, do not answer this description. The custom generally in this quarter is to have, in the zemindary papers, one general rate of rent for all ryots holding the same class of land in a mehal. In some mehals there is a difference, owing to 1st class, 2nd class, or 3rd class, lands; but there is no difference made as to rent on account of difference of status of ryots. Hence the rates paid by non-occupancy ryots Ecannot, in Eastern Bengal at least, be taken as the competitive rate.

(3). Almost all non-occupancy ryots in these districts consist of such as are brought generally at the expense of the zemindar, to settle in ill-conditioned lands, such as jungle lands, or very low lands which are subject to early and heavy inundations, or chur lands in which sand predominates in the soil, or lands lying at inconvenient distances from villages. Zemindars are in consequence put to heavy expense in inducing ryots to settle in such localities, and such ryots are always allowed to pay very low rents at first. They do not hold the same lands from year to year, but change their holdings very often, partly in the hope of getting good crops from untouched lands, and partly to select by actual examination some good spot out of the waste of uncultivated land lying in all directions. After these ryots have settled for some time, they pay higher rates, but it is only after the tracts are brought to a high state of cultivation, and thickly inhabited, that anything like com-

APP. XXI. **petitive or fair rents can be expected from them. If the rents paid by this class of non-occupancy ryots be taken as the competitive rates for the whole of those mehals, which partly consist of such lands, there will be a most serious reduction of rents all round, and zemindars will never try to extend cultivation by holding out the inducement of low rents to fresh comers upon ill-conditioned lands.**

NON-OCCUPANCY
RYOTS, ON PRE-
VAILING RATE
OF RENT.

Para. 23, contd.

(i).—MOORSHEDABAD ASSOCIATION (*12th September 1876*).

The number of the non-occupancy ryots is very small when compared with the occupancy ryots.

(k).—MR. E. G. GLAZIER COLLECTOR OF RUNGPORE (*16th August 1876*).

(1). Rai Ramani Mohun Chowdhri, of Tooshbhandar, a member of the class of zemindars honourably distinguished for his own moderation in dealing with his ryots, says that the zemindars will rack-rent the non-occupancy ryots, in order that they may thus increase the rent of the occupancy ryots. I shall quote his words—"As the rate of the tenants-at-will is an important question in the determination of rent of the occupancy ryots, and therefore of so much interest to the zemindars, it will not unfrequently occur that the zemindar will use unfair means to exact from the non-occupancy ryot exorbitant rates of rent."

Similar testimony was given, or opinions were expressed, by several Collectors and a Commissioner of a division.

24. Under Act X of 1859, the expense of litigation in suits for the enhancement of rent, has greatly increased (para. 1); but by Act VIII of 1869 (Bengal Council) ryots were compensated, in a measure, by the transfer of rent suits to the Civil Courts from Revenue Courts, which, it has been stated by good authority (para. 10), had been very facile in allowing application for enhancement. On the other hand, the zemindars allege that the Civil Courts are resolute in throwing a great burden of proof on zemindars. On 22nd March 1878, the Hon'ble Kristodas Pal moved for leave to introduce a Bill "to provide for the settlement of the rent of lands on the application of landholders or ryots." The intention was "that where the zemindar should be willing to avail himself of the agency of the Revenue authorities in making settlement, he should be allowed the benefit of such agency, provided he paid the cost;" thus throwing upon the Government the labour and trouble of making a ryotwar settlement for the benefit of the zemindar, though in 1793 Government had alienated a vast amount of increment of land revenue in favour of zemindars, because it shrank from a ryotwar settlement in the interests of the State. Eventually the Bill was dropped.

25. On 1st January 1879 the Hon'ble Mr. Mackenzie

moved for leave to introduce into the Bengal Legislative App. XXXI Council a Bill to provide for the more speedy realisation of rent, and to amend the law relating to rent in Bengal. The Bill was referred to a Select Committee, who in a preliminary report incline to the opinion that it should not be proceeded with further, until sufficient time has been allowed for obtaining a full discussion of its provisions by all classes, official and non-official, to which end the Bill has been amended by the Committee. An important question is involved in one of the provisions of the Bill, *viz.*, the transfer by sale of the holding of an occupancy ryot. In moving the first reading of the Bill Mr. Mackenzie explained its origin—

REVISION OF
RENT LAWS.

Para. 28.

Revision of rent
laws.

Honourable Members are doubtless aware that it has frequently been urged upon Government, and was indeed at one time proposed by the Government itself, to remove the cognisance of simple rent suits from the Civil Courts (to which in all permanently settled districts they were made over in 1869), and to restore such cases to the Collectors' files. That was the view embodied in the ninth section of Sir R. Temple's draft Bill to amend the substantive law of rent in Bengal, which was circulated and canvassed in 1876. When it was decided to abandon for the present the attempt to regulate by law the economic problem of enhancement, it was still proposed to simplify, as it was termed, the procedure of rent recovery by entrusting to the Revenue authorities the summary disposal of all suits for rent where the claim was undisputed, relegating the parties to the Civil Court whenever it might appear that there was really a dispute between them.

26. As already observed, the Bill will be held over till the next session of the Bengal Council in December 1879 or January 1880, when there may be attempted a revision of the substantive rent law. On this latter subject the following passages occur in a Resolution of the Bengal Government, dated 22nd October 1878:—

The Board, however, express a strong opinion that the whole subject of the rent law, and of the relations between the landlord and tenant, will ere long have to be dealt with in a comprehensive manner. They say—

“The Board are of opinion that the whole subject of the rent law, and of the relation between the landlord and tenant, will ere long force itself before the Government, and require to be dealt with in a comprehensive manner. It is an enormous subject to face, and so beset with difficulties that there is great danger of its raising such a controversy as may destroy the probability of any useful measure being passed; but such a measure is urgently called for. Whether the old condition of status, which is now rapidly receding, was inferior to the present relations of mere contract, which are year by year supplanting it, may be an open question, but that the one system must disappear and the other replace it, is now inevitable. That being so, it is the more necessary to be prepared with a code of law which may admit of being applied with

APP. XXI. equity and constructive effect, and the Board cannot say that the present code fulfils these conditions. Act X of 1859, replaced by Act VIII of 1869 (Bengal Council), have no doubt their merits; but the last eighteen years' experience has shown many defects and mistakes in them, which are continually sapping the agricultural prosperity of the country, and that the more effectually as the law is the more resorted to. The important subject of occupancy rights, for instance, a most beneficial provision in its original conception, has now been reduced to a state of chaos by conflicting decisions, and it is uncertain whether more than one person can have an occupancy right in the same land, and if not, who of the many grades of under-tenants can successfully claim it. Again, the zemindar's right of suit for every kist the day after it is due, the ryot's right of depositing anything he likes, and calling it his rent, all require to be carefully reconsidered, and kept within safer limits. Still more, the need of a simpler machinery for recovering arrears of rent, including cesses, is urgently called for. The difficulties of legislation may be postponed, perhaps, for another year or two, but the Board are disposed to think that the sooner the subject is grappled with the better."

REVISION OF
RENT LAWS.
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Para. 26, contd.

The Lieutenant-Governor thinks it very possible that "the revision of the Rent Law, desired by the Board, may have eventually to be taken in hand, though there is at present, apparently, no very marked demand for this, and he will be very glad to receive from the Board a draft of such a law. It is, however, of urgent importance to give the zemindar the means of realising more readily his undisputed rents, and at the same time to place the tenant-right of the ryot on a firmer basis; these two ends the Lieutenant-Governor hopes to secure at no very distant date. He could not hope for any such result were the necessary measures made a part of a general codification of the Rent Law, which it might take years to settle."

27. It appears from this Appendix that if Act X of 1859 has delivered ryots from some greivous evils, it has deteriorated their status in other respects. For the ryot's protection, rent cannot be enhanced except through a suit in a Civil Court; but the expenses of litigation, which the zemindar can bear, but not the ryot, have increased; occasions for enhancement of rent have been multiplied; and suits for recovery and enhancement of rent, with their attendant heavy costs of litigation, have greatly increased, while the principles for determining the proper rent payable by the ryot are ill defined, and considerations have been imported into the discussion for determining those principles, of a character so complicated and embarrassing as to evidence, by their marked contrast to the simplicity of the pergunnah rate in 1793, how great has been the departure (to the ryot's prejudice) from the engagements of that year, in which the faith of Government was as solemnly pledged to the ryot as to the zemindar.

APPENDIX XXII.

LAND TENURES IN THE WEST.

The feudal system.

1. In Europe, states the oldest forms of property in land were of the same type.

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THE MARK.

I.—WESTERN WORLD.

For many years past there has been sufficient evidence to warrant the assertion that the oldest discoverable forms of property in land were forms of collective property, and to justify the conjecture that separate property had grown through a series (though not always an identical series) of changes out of collective property or ownership in common. But the testimony which was furnished by the Western World had one peculiarity. The forms of collective property which had survived and were open to actual observation were believed to be found exclusively in countries peopled by the Slavonic race. It is true that historical scholars who had made a special study of the evidence concerning ancient Teutonic holdings, as, for example, the early English holdings, might have been able to assert of them that they pointed to the same conclusions as the Slavonic forms of village property; but the existing law of property in land, its actual distribution, and the modes of enjoying it, were supposed to have been exclusively determined in Teutonic countries by their later history.

Maine's Village
Communities,
Lecture III,
page 77.

II.—THE MARK.

The ancient Teutonic cultivating community, as it existed in Germany itself, appears to have been thus organised: It consisted of a number of families standing in a proprietary relation to a district divided into three parts: These three portions were the mark of the township or village, the common mark or waste, and the arable mark or cultivated area. The community inhabited the village, held the common mark in mixed ownership, and cultivated the arable mark in lots appropriated to the several families.

(a).—THE TOWNSHIP.

Each family in the township was governed by its own free head or *paterfamilias*. The precinct of the family dwelling-house could be entered by nobody but himself and those under his *patria potestas*, not even by officers of the law, for he himself made law within, and enforced law made without. But while he stood under no relations controlable by others to the members of his family, he stood in a number of very

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THE MARK.

Para. 1, contd.

intricate relations to the other heads of families. The sphere of usage or customary law was not the family, but the connection of one family with another and with the aggregate community.

(b).—THE COMMON MARK.

Confining ourselves to proprietary relations, we find that his rights (those of the *paterfamilias*), or (what is the same thing) the rights of his family over the common mark, are controlled or modified by the rights of every other family. It is a strict ownership in common, both in theory and in practice. When cattle grazed on the common pasture, or when the householder felled wood in the common forest, an elected or hereditary officer watched to see that the common domain was equitably enjoyed.

(c).—THE ARABLE MARK.

(1). But the proprietary relation of the householder which has most interest for us is his relation to the arable mark. It seems always in theory to have been originally cut out of the common mark, which, indeed, can only be described as the portion of the village domain not appropriated to cultivation. In this universally recognised original severance of the arable mark from the common mark, we come very close upon the beginning of separate or individual property.

(2). The cultivated land of the Teutonic village community appears almost invariably to have been divided into three great fields. A rude rotation of crops was the object of this threefold division, and it was intended that each field should lie fallow once in three years.

(3). The fields under tillage were not, however, cultivated by labour in common. Each householder has his own family lot in each of the three fields, and this he tills by his own labour and that of his sons and slaves. But he cannot cultivate as he pleases. He must sow the same crop as the rest of the community, and allow his lot in the uncultivated field to lie fallow with the others. Nothing he does must interfere with the right of other households to have pasture for sheep and oxen in the fallow and among the stables of the fields under tillage. * *

(4). The evidence appears to me to establish that the arable mark of the Teutonic village community was occasionally shifted from one part of the general village domain to another. It seems also to show that the original distribution of the arable area was always into exactly equal portions, corresponding to the number of free families in the township.

(5). Nor can it be seriously doubted upon the evidence that the proprietary equality of the families composing the group was at first still further secured by a periodical redistribution of the several assignments. The point is one of some importance. One stage in the transition from collective to individual property was reached when the part of the domain under cultivation was allotted among the Teutonic races to the several families of the township: another was gained when the system of 'shifting severalties' came to an end, and each family was confirmed for a perpetuity in the enjoyment of its several lots of land. But there appears to be no country inhabited by an Aryan race in which traces do not remain of the ancient periodical redistribution. It has continued

to our own day in the Russian villages. Among the Hindoo villagers there are widely extending traditions of the practice; and it was doubtless the source of certain usages, to be hereafter described, which have survived to our own day in England and Germany.

2. Mr. Hearn, in his work on *The Aryan Household*, gives a similar account of the Mark, from which the following may be quoted:—

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—
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—
Para. 2.

I. I have said that, so far as related to his house and its enclosure, the House Father was absolutely independent. His actions, even those which would now come under the cognizance of the State, were subject to no control. But outside the charmed circle, his position was very different. In every single act he was bound to care, and to care very much, for other men. He was no longer at liberty to do what he liked with his own. On the contrary, it was his duty to do with it what the custom of the community required. He held certain rights in the arable mark, that is, in the agricultural reserve of the community; but both these rights and the modes of his enjoyment of them were strictly defined.

II. Out of the public land, a certain portion was set apart for purposes of cultivation. This portion was divided, somewhat like shares in a company, among all the households of the village. The size of these reserves, and of the allotments into which they were divided, varied in different places. The rules of cultivation in like manner varied according to local requirements, but in each community they were uniform.

III. The allotments were held subject to an elaborate code of minute regulations, of which the object was to secure uniformity of cultivation among the several proprietors. Thus, among the Teutonic tribes, the arable mark was divided into three fields. Of these fields, one was left fallow, one was used for wheat, and one for some spring crop; but the whole of each field was at the same time either left fallow or cultivated with the same kind of crop. In these circumstances the lot of each household was divided into three parts, one for each field. Each of these parts was, from the nature of the case, at some distance from the other parts, and never formed one consolidated property. These allotments were granted for agricultural purposes and for none other. Consequently, when the crop was removed, the rights of the commoners to the use of the soil revived. After a given day, the temporary fences were removed, and the cattle of all the clansmen were allowed to depasture on the stubble. On the fallow field, on the haulks of land dividing the fields, and on the meadow lands after the hay harvest, the right of common pasture in like manner prevailed.

IV. If it be asked how the original distribution of the arable mark was determined, the answer must be that it was settled at the first formation of the community. If the community were in the nature of a colony, or of the settlement of a branch or sub-clan, its portion was assigned to it by the formal act by which the colony was established or the branch was endowed.

3. Varying the account, the following occurs in a paper by Mr. R. B. D. Morier, C.B., on *The Agrarian Legislation of Prussia during the present century*, which is included

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Para. 3, contd.

among the Essays published by the Cobden Club on *Systems of land tenure in various countries*.

I. The original Teutonic community is an association of freemen, a 'Gemeinde,' a commonalty or commons (not common people, in contradistinction to uncommon people, that is, a privileged class, but a body of men having property in common), amongst whom the right of private property in land is correlative to the public duty of military service and participation in the judicial and other political acts of the community. These public duties are of a comparatively simple kind; the agricultural relations of the community, on the other hand, are of a comparatively complicated kind.

II. The district or mark (*i. e.*, the geographical area *marked* out and appropriated by the community) consists of three distinct parts; first, the *common mark* (the Folcland of the Anglo-Saxon), owned jointly by the community; secondly, the *arable mark* (Fieldmark), cut out of the common mark, and apportioned in equal lots to the members of the community (the Anglo-Saxon Boc land); and lastly, the *mark of the township* (Dorf, thorp, villa), also divided into equal lots, and individually appropriated.

III. The individual marksman, therefore, stands in a threefold relation to the land *occupied by the Gemeinde*.

(a). He is a joint proprietor of the *Common land*; he is an allottee in the *ARABLE MARK*; and he is a householder in the *township*. In the first case he owns *de indiviso*, and his rights are strictly controlled by those of his co-marksmen. His cattle grazes on the common pasture, under the charge of the common herdsman; he hews wood in the forest, under the control of a communal officer.

(b). In the *ARABLE MARK* he has a distinct inheritance, and can call a certain number of square roods his own; but he must cultivate his lot in concert with his associates; and the community at large determines on the mode of its cultivation. The whole mark is divided into as many parts or fields ("Fluren" "Campi,") as the rotation of crops and the alternation between fallow and plough requires; usually into three such "commonable" *fields*, each *field* lying fallow once in three years, the community having rights of pasturage on the fallow as well as on the stubbles of the land under the plough.

It is these common rights of pasturage on the *arable mark* which it is of importance to note, for it was from these rights, and not from the right of pasturage on the *common pasture*, that mediæval agriculture derived its distinctive character. The obligatory cultivation on the "Three Field system," the *common temporary* enclosure of the commonable field (not of the individual parcel) whilst the crop is growing, the removal of that enclosure after harvest, the prohibition against *permanent* and *individual* enclosures, are all of them results which flowed from the common right of pasture on the *fallow* and *stubbles*.

4. Leaving the village commune for a while, we may consider the feudal system in (1), its tenures, (2), the property which became the subject of the tenures.

I. The essential constituent and distinguishing characteristic of the species of estate called a feud or a fief, was from the first, and always

continued to be, that it was not an estate of absolute and independent ownership. The property, or *dominium directum*, as it was called, remained in the grantor of the estate. The person to whom it was granted did not become its owner, but only its tenant or holder. There is no direct proof that fiefs were originally resumable at pleasure; but it is not denied that the fief was at one time revocable, at least on the death of the grantee. In receiving it, therefore, he had received not an absolute gift, but only a loan, or, at most, an estate for his own life. * *

II. Palgrave doubts if the word *Feudum* ever existed. The true word seems to be *Fevdum* (not distinguishable from *Feudum* in old writing), or *feftum*. *Fiev*, or *Fief* (Latinised into *Fevodium*, which some contracted into *Feudum*, and others, by omitting the *v*, into *Feodum*), he conceives to be *Fitef*, or *Phitef*, and that again to be a colloquial abbreviation of *Emphyteusis* (pronounced *Emphytefsis*), a well known term of the Roman imperial law for an estate granted to be held, not absolutely, but with the ownership still in the grantor, and the usufruct only in the hands of the grantee. It is certain that emphyteusis was used in the middle ages as synonymous with *precaria* (an estate held on a precarious or uncertain tenure); that *precaria*, and also *praestita* or *praestaria* (literally loans), were the same with *beneficia*; and that *beneficia* under the emperors were the same, or near the same, as fiefs (see these positions established in Palgrave, *ut supra*, cciv—cevi).

II. The other chief element which enters into the system of feudalism is the connection subsisting between the grantor and the grantee of the fief, the person having the property and the person having the usufruct, or, as they were respectively designated, the suzerain or lord, and the tenant or vassal. Tenant may be considered as the name given to the latter in reference to the particular nature of his right over the land; vassal that denoting the particular nature of his personal connection with his lord. The former has been already explained; the condition of the latter introduces a new view. By some writers the feudal vassals have been derived from the *comites*, or officers of the Roman imperial household; by others from the *comites*, or companions, mentioned by Tacitus (German. 13, &c.) as attending upon each of the German chiefs in war. The latter opinion is ingeniously maintained by Montesquien (xxx, 3). One fact appears to be certain and of some importance, namely, that the original vassals or vassi were merely noblemen who attached themselves to the court and to attendance upon the prince, without necessarily holding any landed estate or *beneficium* by royal grant. In this sense the words occur in the early part of the ninth century. Vassal has been derived from the Celtic *gwas*, and from the German *gesell*, which are probably the same word, and of both of which the original signification seems to be a helper, or subordinate associate, in labour of any kind.

III. If the vassal was at first merely the associate of or attendant upon his lord, nothing could be more natural than that, when the lord came to have land to give away, he should most frequently bestow it upon his vassals, both as a reward for their past, and a bond by which he might secure their future services. It was not the interest of the vassal's lord to sever their connection, and to allow him to become independent; probably that was as little the desire of the vassal himself; he was conveniently and appropriately rewarded, therefore, by a fief, that is, by a

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Para. 4, contd.

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Para. 4, contd.

loan of land, the profits of which were left to him as entirely as if he had obtained the ownership of the land, but his precarious and revocable tenure of which, at the same time, kept him bound to his lord in the same dependence as before.

IV. Here, then, we have the union of the feud and vassalage—two things which remained intimately and inseparably combined so long as the feudal system existed. Nevertheless, they would appear, as we have seen, to have been originally quite distinct, and merely to have been thrown into combination by circumstances. At first, it is probable that as there were vassals who were not feudatories, so there were feudatories who were not vassals. But very soon, when the advantage of the association of the two characters came to be perceived, it would be established as essential to the completeness of each. Every vassal would receive a fief, and every person to whom a fief was granted would become a vassal. Thus a vassal and the holder of a fief would come to signify, as they eventually did, one and the same thing.

V. Fiefs, as already intimated, are generally supposed to have been at first entirely precarious, that is to say, resumable at any time at the pleasure of the grantor. But if this state of things ever existed, it probably did not last long. Even from the first it is most probable that many fiefs were granted for a certain term of years, or for life. And in those of all kinds a substitute for the original precariousness of the tenure was soon found, which, while it equally secured the rights and interests of the lord, was much more honourable and in every way more advantageous to the vassal. This was the method of attaching him by certain oaths and solemn forms, which, besides their force in a religious point of view, were so contrived as to appeal also to men's moral feelings, and which, therefore, it was accounted not only impious but infamous to violate. The relation binding the vassal to his lord was made to wear all the appearance of a mutual interchange of benefits, of bounty and protection on the one hand, of gratitude and service due on the other; and so strongly did this view of the matter take possession of men's minds, that in the feudal ages even the ties of natural relationship were looked upon as of inferior obligation to the artificial bond of vassalage.

VI. As soon as the position of the vassal had thus been made stable and secure, various changes would gradually introduce themselves. The vassal would begin to have his fixed rights as well as his lord, the oath which he had taken measuring and determining both these rights and his duties. The relation between the two parties would cease to be one wholly of power and dominion on the one hand, and of mere obligation and dependence on the other. If the vassal performed that which he had sworn, nothing more would be required of him. Any attempt of his lord to force him to do more would be considered as an injustice. These connections would now assume the appearance of a mutual compact, imposing corresponding obligations upon both, and making protection as much a duty in the lord, as gratitude and service in the vassal.

VII. Other important changes would follow this fundamental change, or would take place while it was advancing to completion. After the fief had come to be generally held for life, the next step would be for the eldest son usually to succeed his father. His right so to succeed would next be established by usage. At a later stage fiefs became

descendible in the collateral as well as in the direct line. At a still later, they became inheritable by females as well as by males. There is much difference of opinion, however, as to the dates at which these several changes took place. * *

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VIII.—SUB-INFEUDATION.

Originally fiefs were granted only by sovereign princes, but after estates of this description, by acquiring the hereditary quality, came to be considered as property to all practical intents and purposes, these holders proceeded, on the strength of their completeness of possession, themselves to assume the character and to exercise the rights of lords, by the practice of what was called sub-infeudation, that is the alienation of portions of their fiefs to other parties, who, thereupon, were placed in the same or a similar relation to them as that in which they stood to the prince. The vassal of the prince became the lord over other vassals; in this latter capacity he was called a *mesne* (that is, an intermediate) lord; he was a lord and a vassal at the same time. In the same manner, the vassal of a *mesne* lord might become also the lord of other *arrero* vassals, as those vassals that held of a *mesne* lord were designated. This process sometimes produced curious results; for a lord might in this way actually become the vassal of his own vassal, and a vassal a lord over his own lord.

5. These feudal tenures attached in the first instance to waste lands, or to benefices granted by the king, in which there were no private rights of property; eventually, however, lands held as *allodia* in full and entire ownership were merged into the feudal system. Allodial lands.

I. *Allo'dium* or *Alo'dium*, property held in absolute dominion, without rendering any service, rent, fealty, or other consideration whatsoever to a superior. It is opposed to *Feodum* or *Fief*, which means property the use of which is bestowed by the proprietor upon another, on condition that the person to whom the gift is made shall perform certain services to the giver, upon failure of which, or upon the determination of the period to which the gift was confined, the property reverts to the original possessor. *Ibid.*

II. When the barbarian tribes from the northern parts of Europe over-ran the Western Roman Empire in the fifth and sixth centuries, they made a partition of the conquered provinces between themselves and the former possessors. The lands which were thus acquired by the Franks, the conquerors of Gaul, were termed *allodial*. These were subject to no burden except that of military service, the neglect of which was punished with a fine (called *Heribannum*) proportioned to the wealth of the delinquent. They passed to all the children equally, or, in default of children, to the next of kin of the last proprietor. Of these *allodial* possessions there was a peculiar species denominated *Salic*, from which females were excluded.

III. Besides the lands distributed among the nation of the Franks, others termed *fiscal* land (from *Fiscus*, a word which among the Romans

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Para. 5, contd.

originally signified the property which belonged to the emperor as emperor) were set apart to form a fund which might support the dignity of the king, and supply him with the means of rewarding merit and encouraging valour. These, under the name of *benefices* (beneficia) were granted to favoured subjects, upon the condition, either expressed or implied, of the grantees rendering to the king personal service in the field. It has been supposed by some writers that these benefices were originally resumable at pleasure, that they were subsequently granted for life, and finally became hereditary. But there is no satisfactory proof of the first stage in this progress. (Hallam, *Middle Ages*, vol. 1, chap. 2, 8th edition.)

IV. From the end of the fifth to the end of the eighth century, the allodial tenures prevailed in France. But there were so many advantages attending the beneficiary tenure, that even in the eighth century it appears to have gained ground considerably. The composition for homicide, the test of rank among the barbarian nations of the north of Europe, was, in the case of a king's vassal, treble the amount of what it was in the case of an ordinary free-born Frank. A contumacious resistance on the part of the former to the process of justice in the King's Courts, was passed over in silence; while the latter, for the same offence, was punished with confiscation of goods. The latter also was condemned to undergo the ordeal of boiling water for the least crimes; the former, for murder only. A vassal of the king was not obliged to give evidence against his fellow-vassal in the King's Courts. Moreover, instead of paying a fine like the free allodialist, for neglect of military service, he had only to abstain from flesh and wine for as many days as he had failed in attendance upon the army.

V. The allodial proprietors, wishing to acquire the important privileges of king's vassals without losing their domains, invented the practice of surrendering them to the king in order to receive them back again for themselves and their heirs upon the feudal conditions, that is, as benefices.

6. In other places and in earlier times allodial proprietors were forced, by the insecurity of property, to subject themselves to the nearest feudal lords.

Every district was exposed to continual hostilities; sometimes from a foreign enemy, more often from the owners of castles and fastnesses, which, in the tenth century, under pretence of resisting the Normans and Hungarians, served the purposes of private war. Against such a system of rapine the military compact of lord and vassal was the only effectual shield; its essence was the reciprocity of service and protection. But an insulated allodialist had no support. Without law to redress his injuries, without the royal power to support his right, he had no course left but to compromise with oppression, and subject himself, in return for protection, to a feudal lord. This was usually called *commendation*, which created a personal relation between lord and vassal, closely resembling that of patron and client in the Roman republic.

7. Slightly varying the above account, to adapt it to France, the following may be quoted from Guizot's *History of Civilization in France*.

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XXII.

RISE OF FEU-
DALISM.
—
PARA. 7, CONTD.

I. (a). Two societies subsisted in ancient Germany ; first, the society of the colony or tribe, tending to a sedentary condition, and existing upon a limited territory, which it cultivated by means of labourers and slaves ; second, the society of the war-faring horde, a band or wandering society, composed of warriors united round a chief, either for some special expedition, or to seek fortune at a distance, and living by pillage.

(b). It was not the German tribes, but the band, which went into the Gallo-Roman territory, seized upon it, and established itself there. Of the two original societies of Germany, that which was not resident, but wandering, whose basis was the individual, not the family, and which was devoted, not to an agricultural life, but to warfare, this became one of the primitive elements of our (French) civilization. In Germany it was the agricultural tribe, among us it was the warlike band, which is seen at the cradle of society. This Germanic band, however, in proportion as it gave up a wandering life and fixed itself upon our territory, endeavoured to reproduce the institutions, the habits of its native country ; the organization of the tribe was the model of the system which it attempted to adopt. * *

II. (a). It must not be supposed, however, that when the barbarians seized upon the Roman world, they divided the territory into lots more or less considerable, and that each, taking one for himself, established himself upon it. Nothing of the kind happened. The chiefs, the men of importance, appropriated a large extent of land to themselves, and most of their companions ; these men continued to live with them in their houses, always attached to their person. But the inclination and desire for territorial property were not long in spreading. In proportion as the habits of the wandering life left them, a greater number of men wished to become proprietors. Besides, money was rare ; land, so to speak, was most common, the most disposable coin ; it was employed to repay all sorts of services. The possessors of large dominions distributed them among their companions by way of payment.

(b). And every great proprietor, ecclesiastic or layman, Egenhard or Charlemagne, paid in this way most of the free men whom he employed. Thence arose the rapid division of landed property and the multiplication of petty benefices.

III. When the German tribe was transplanted to the soil of Gaul, their habitations became dispersed. The chiefs of families established themselves at a much greater distance from one another ; they occupied vast domains ; their houses afterwards became castles. The villages which formed themselves around them were no longer peopled with men who were free, who were their equals, but with labourers who were attached to their lands. Thus, in its material relations, the tribe became dissolved by the single fact of its new establishment.

IV. (a). Property, for a long time after the settlement of the barbarians, seemed uncertain, fluctuating, and confused, passing from one hand to another with surprising rapidity. The tendency of fiefs, indeed, is to become hereditary. But we must not transport into the sixth and seventh centuries the feudalism of the thirteenth ; nothing like it then existed. * *

(b). At this period (dismemberment of the Empire of Charlemagne, say end of ninth century) we see the wandering life ceasing, in its turn,

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DALISM.

Para. 7, contd.

through the interior of Europe; * * everywhere little societies, little states, cut, so to speak, to the measure of the ideas and the wisdom of man, formed themselves. Between these societies was generally introduced the bond of which the customs of barbarism contained the form,—the bond of a confederation which did not annihilate individual independence. On the one hand, every considerable person established himself in his domains, alone with his family and servitors; on the other hand, a certain hierarchy of services and rights became established between these warlike proprietors scattered over the land. What was this? The feudal system rising definitively from the bosom of barbarism.

8. The principle of sovereignty which had been concentrated in the Roman Empire was locally distributed by feudalism among the numerous fiefs.

Standard Liby.
Cyclopædia.

I. The grant of land as a fief, especially when it was a grant from the suzerain or supreme lord, whether called king or duke, or any other name, was, sometimes at least, accompanied with an express grant of jurisdiction. Thus every great tenant exercised a jurisdiction, civil and criminal, over his immediate tenants; he held courts and administered the laws within his lordship like a sovereign prince. The formation of MANORS in this country (England) appears to have been consequent upon the establishment of feudalism. The existence of Manor-courts, and so many small jurisdictions within the kingdom, is one of the most permanent features of that polity which the Normans stamped upon this country.

II.—MANOR.

A manor is commonly said to consist of demesnes and services, which have been called the “material causes;” but other things may also be members and parcel of a manor.

(a). The demesnes are those lands within the manor of which the lord is seised, *i.e.*, of which he has the freehold, whether they are in his own occupation or in that of his tenants-at-will or his tenants for years. The tenants-at-will have either a common law estate, holding at the joint will of the lessor and of the lessee, or a customary estate, holding at the will of the lord, according to the custom of the manor. The tenancy for years of lands within a manor is, in modern times, usually a common law estate.

(b). The services of a manor are the rents and other services due from free-hold tenants holding of the manor. These services are annexed or appendant to the seigniority over the lands holden by such freehold tenants. The lands holden by the free-holders of the manor are holden of the manor, but are not *within*, or *parcel of*, the manor, though within the lord’s fee or manorial seigniority. Copyholds, being part of the demesnes, are not held of the manor, but are within and parcel of the manor. * *

(c). It is a distinguishing feature of the feudal system to make civil jurisdiction necessarily, and criminal jurisdiction ordinarily, co-extensive with tenure; and accordingly there is inseparably incident to every manor a court-baron, being a court in which the freeholders of the

manor are the sole judges, but in which the lord, by himself, or more commonly by his steward, presides.

III. (a). Under the feudal system, aids were certain claims of the lord upon the vassal, which were not so directly connected with the tenure of land as relief, fines, and escheats. The nature of these claims, called in the Latin of the age *Auxilia*, seems to be indicated by the term; they were originally rather extraordinary grants or contributions, than demands due according to the strict feudal system, though they were certainly founded on the relation of lord and vassal. These aids varied according to local custom, and became in course of time oppressive exactions; * * for by Magna Charta it was provided that the king should take no aids, except the three following, without the consent of Parliament and that the inferior lords should not take any other aids.

(b). The three kinds of aids above mentioned require a more particular notice, as this contribution of the vassal to the lord forms a striking feature in the feudal system of England—

(1). When the lord made his eldest son a knight;—this ceremony occasioned considerable expenses, and entitled the lord to call upon his tenant for extraordinary assistance.

(2). When the lord gave his eldest daughter in marriage, he had her portion to provide, and was entitled to claim a contribution from his tenants for this purpose. The amount of these two kinds of aid was limited to a certain sum by the Statute of Westminster, 1, 3 ed., 1, C. 36.

(3). The third aid, which was to ransom the lord when taken prisoner, was of less frequent occurrence.

(4). Aid is also a general name for the extraordinary grants which are made by the House of Commons to the crown for various purposes.

This special legislation for limiting the amount of aids or extraordinary demands on the tenant implies that the ordinary demand upon him was limited, and with the exception of these three aids, all others were leviable only under Act of Parliament as extraordinary grants to the Crown, resembling, in this particular, the State *abwabs*, or cesses, in excess of the established *pergunnah* rate of rent, which, in Bengal, were levied under native rule for public purposes.

9. It further appears that actual cultivators of the land were subjected to the holders of fiefs on military or political considerations, and not for promoting agriculture. The feudal lord was disqualified by his habits and pursuits from improving his estate.

I.—M. GUIZOT.

(a). With the isolation of the castle and its inhabitants was combined a singular indolence. The possessor of the castle had nothing to do; no duties, no regular occupation; * * it was not he who improved his fields; * *

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—
FEUDAL
LANDLORDS.
—
Para. 8, contd.

(δ). The life of the possessors of fiefs was 'passed upon the high roads in adventures. * * Can it be supposed that the crusades would be possible among a people who had not been accustomed, brought up from childhood, to this wandering adventurous life? In the twelfth century, the crusades were not nearly so singular as they appear to be to us. The life of the possessors of fiefs, with the exception of the pious motive, was an incursion or continual crusade in their own country. They here went farther, and from other causes; that is, the great difference. For the rest they did not leave their habits; they did not essentially change their mode of life.

II.—MR. HALLAM.

The peace and good order of society were not promoted by this system. Though private wars did not originate in the feudal customs, it is impossible to doubt that they were perpetuated by so convenient an institution, which, indeed, owed its universal establishment to no other cause. And as predominant habits of warfare are totally irreconcilable with those of industry, not merely by the immediate works of destruction which render its efforts unavailing, but through that contempt of peaceful occupations which they produce, the feudal system must have been intrinsically adverse to the accumulation of wealth, and the improvement of those arts which mitigate the evils or abridge the labours of mankind.

10. The primitive state of property in land in the village commune, and that brought about by the feudal system, are thus described by Sir Henry Maine in his *Village Communities*—

I. The student of legal antiquities, who has once convinced himself that the soil of the greatest part of Europe was formerly owned and tilled by proprietary groups, of substantially the same character and composition as those which are still found in the only parts of Asia which are open to sustained and careful observation, has his interest immediately drawn to what, in truth, is the great problem of legal history. This is the question of the process by which the primitive mode of enjoyment was converted into the agrarian system, out of which immediately grew the land-law prevailing in all Western Continental Europe before the first French Revolution, and from which is demonstrably descended our own existing real-property law. For this newer system no name has come into general use except Feudalism, a word which has the defect of calling attention to one set only of its characteristic incidents. * *

II. There is no question that the benefices either began or hastened the changes which led ultimately to feudalism. Yet, I think that nobody whose mind has dwelt on the explanation has brought himself to regard it as complete. It does not tell us how the benefices came to have so extraordinary a historical fortune. It does not account for the early, if partial, feudalisation of countries like Germany and England, where the cultivated soil was in the hands of free and fully organised communities, and was not, like the land of Italy or Gaul, at the disposal

of a conquering king, where the royal or national grants resembling the benefices were probably made out of waste land, and where the influence of Roman law was feebly felt, or not at all. * *

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III. If we begin with modern English real-property law, and, by help of its records and of the statutes affecting it, trace its history backwards, we come upon a period at which the soil of England was occupied and tilled by separate proprietary societies. Each of these societies is, or bears the marks of having been, a compact and organically complete assemblage of men, occupying a definite area of land. Thus far it resembles the old cultivating communities, but it differs from them in being held together by a variety of subordinate relations to a feudal chief, single or corporate, the lord.

THE VILLAGE
COMMUNE
ABSORBED IN
THE FEUDAL
SYSTEM.

Para. 10, contd.

IV. I will call the new group the Manorial group; and though my words must not be taken as strictly correct, I will say that a group of tenants, autocratically organized and governed, has succeeded a group of households of which the organization and government were democratic. The new group, as known to our law, is often in a state of dissolution, but where it is perfect, it consists of a number of persons holding land of the lord by free tenures, and of a number of persons holding land of the lord by tenures capable of being shown to have been in their origin servile, the authority of the lord being exercised over both classes, although in different ways, through the agency of a peculiar tribunal, the Court Baron.

V. The lands held by the first description of tenants (free-hold) are technically known as tenemental lands; those held by the second class constitute the Lord's Domain. Both kinds of land are essential to the completeness of the Manorial group. If there are no tenemental lands to supply a certain minimum number of free tenants to attend the Court Baron, and, according to the legal theory, to sit with the lord as its judges, the Court Baron can no longer in strictness be held; if it be continued under such circumstances, as it often was in practice, it can only be held as a customary Manorial Court, sitting for the assessment and receipt of customary dues from the tenants of the Domain. On the other hand, if there be no Domain, or if it be parted with, the authority of the lord over the free tenants is no longer Manorial; it becomes a Seigniorship in gross, or mere Lordship.

VI. Since much of the public waste land of our country is known to have passed by national or royal grant to individuals or corporations, who, in all probability, brought it extensively under cultivation from the first by servile labour, it cannot be supposed that each of the Manorial groups takes the place of the village group, which at some time or other consisted of free allodial proprietors. Still, we may accept the belief of the best authorities that over a great part of England there has been a true succession of one group to the other.

VII. Comparing, then, the two, let us ask what are the specific changes which have taken place. The first, and far the most important of all, is that, in England, as everywhere in Western Europe, the waste or common land of the community has become the lord's waste. It is still ancillary to the tenemental lands; the free tenants of the lord whom we may provisionally take to represent the freemen of the village community retain all these ascertained rights of pasture and gathering

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Para. 10, contd.

firewood, and in some cases similar rights have been acquired by other classes; but, subject to all ascertained rights, the waste belongs, actually or potentially, to the Lord's Domain. The lord's right of appropment, affirmed by the Statute of Merton, and extended and confirmed by subsequent statutes, permits him to enclose and appropriate so much of the waste as is not wanted to satisfy other existing rights; nor can it be doubted that he largely exercises this right, reclaiming part of the waste for himself by his personal dependants, and adding to it whatever share may have belonged to him from the first in the cultivated land of the community, and colonising other portions of it with settlements of his villains, who are on their way to become copyholders. The legal theory has altogether departed from the primitive view; the waste is now the lord's waste; the commoners are for the most part assumed to have acquired their rights by sufferance of the lord, and there is a visible tendency in courts and text-writers to speak of the lord's rights not only as superior to those of the commoners, but as being in fact of greater antiquity.

VIII. When we pass from the waste to the grass lands which were intermediate between the common land and the cultivated area, we find many varieties in the degree of authority acquired by the lord. The customs of manors differ greatly on the point. Sometimes the lord encloses for his own benefit from Candlemas to Midsummer or Lammas, and the common right belongs during the rest of the year to a class of burgesses, or to the householders of a village, or to the persons inhabiting certain ancient tenements. Sometimes the lord only regulates the enclosure, and determines the time of setting up and removing the fences. Sometimes other persons enclose, and the lord has the grass when the several enjoyment comes to an end. Sometimes his right of pasture extends to the baulks of turf which separate the common arable fields; and probably there is no manorial right which in later times has been more bitterly resented than this, since it is practically fatal to the cultivation of green crops in the arable soil.

IX. Leaving the meadows, and turning to the lands under regular tillage, we cannot doubt that the freeholders of the tenemental lands correspond in the main to the free heads of households composing the old village community. The assumption has often been made, and it appears to be borne out by the facts which can be established, as to the common fields still open or comparatively enclosed. The tenure of a certain number of these fields is freehold; they are parcelled out, or may be shown to have been in the last century parcelled out, among many different owners; they are nearly always distributed into three strips, and some of them are even at this hour cultivated according to methods of tillage which are stamped by their very rudeness as coming down from a remote antiquity. They appear to be the lands of a class which has never ceased to be free, and they are divided and cultivated exactly as the arable mark of a Teutonic township can be inferred, by a large induction, to have been divided and tilled. But, on the other hand, many large tracts of intermixed land are still, or were till their recent enfranchisement, copyhold of particular manors, and some of them are held by the intermediate tenure known as customary freehold, which is confined by the legal theory to lands which once formed part of the King's Domain.

X. I have not been able to ascertain the proportion of common lands held by these bare tenures to freehold lands of the same kind, but there is no doubt that much commonable or intermixed land is found which is not freehold. Since the descent of copyhold and customary freehold tenures from the holdings of servile classes appears to be well established, the frequent occurrence of intermixed lands of this nature seems to bear out the inference suggested by Sir H. Ellis's enumeration of the conditions of men referred to in Domesday Book, that during the long process of feudalisation, some of the free villagers sank to the status, almost certainly not a uniform status, which was implied in villenage (see also Mr. Freeman's remark, "*Hist. Norm. Conq.*," 1, 97). But evidence supplied from other quarters, so wide apart as British India and the English settlements in North America, leads me to think that, at the time when a system of customary tillage widely prevailed, assemblages of people planted on waste land would be likely to copy the system literally; and I conjecture that parts of the great wastes undoubtedly reclaimed by the exercise of the right afterwards called the lord's "right of approvement," were settled by servile colonies modelled on the ancient Teutonic township.

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—
LORD AND
VASSAL A TEN-
FORARY RELA-
TIONSHIP.

—
Para. 12.

11. It appears from these extracts that the proprietary right of the village commune survived that onset of barbarism which destroyed the framework of society and shattered to pieces the Roman empire; and that it was respected by the feudalism which sprang from the free gifts of land from chiefs of successive conquering hordes to their followers. In India, the right corresponding to the freehold tenure of the European village commune is that of cultivating land at an old immutable *pergunnah* rate; but this right, similar to that which barbarous and feudal barons spared during the lawlessness of some centuries, the *zemindars* in Bengal have destroyed in less than a century.

12. Of the relations established by feudalism between lord and vassal, M. Guizot wrote—

I. The nature of man is so good and fruitful, that when a social situation endures for any length of time, a certain moral tie, sentiments of protection, benevolence, and affection, inevitably establish themselves among those who are thus approximated to one another, whatever may be the conditions of approximation. It happened thus with feudalism. No doubt, after a certain time, some moral relations, some habits of affection, became contracted between the colonists and the possessor of the fief. But this happened in spite of their relative position, and not by reason of its influence. Considered in itself, the position was radically wrong. There was nothing morally in common between the possessor of the fief and the colonists; they constituted part of his domain; they were his property; and under this name, property, were included all the rights which, in the present day, are called rights of public sovereignty, as well as the rights of private property, the right of imposing laws, of taxing, and punishing, as well as that of disposing and selling. As far

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VASSAL A TEN-
ANTHROPY RELA-
TIONSHIP.

Para. 12, contd.

as it is possible that such should be the case where men are in presence of men, between the lord and the cultivators of his lands there existed no rights, no guarantees, no society.

II. Hence, I conceive, the truly prodigious and invincible hatred with which the people at all times have regarded the feudal system, its recollections, its very name. It is not a case without example for men to have submitted to oppressive despotisms, and to have become accustomed to them; nay, to have willingly accepted them. Theocratic and monarchical despotisms have more than once obtained the consent, almost the affections, of the population subjected to them. But feudal despotism has always been repulsive and odious; it has oppressed the destinies, but never reigned over the souls of men. The reason is that in theocracy and monarchy power is exercised in virtue of certain words which are common to the master and to the subject; it is the representative, the minister, of another power superior to all human power; it speaks and acts in the name of the Divinity or of a general idea, and not in the name of man himself, of man alone. Feudal despotism was altogether different; it was the power of the individual over the individual; the dominion of the personal and capricious will of a man. This is, perhaps, the only tyranny of which, to his eternal honour, man will never willingly accept. Whenever, in his master, he beholds a mere man, from the moment that the will which oppresses him appears a merely human and individual will, like his own, he becomes indignant, and supports the yoke wrathfully. Such was the true and distinguishing character of feudal power; and such was also the origin of the antipathy which it has ever inspired.

When the French Revolution was sounding the knell of feudalism, Lord Cornwallis was copying it in his scheme of great zemindars, who were incapable of rendering the military service which was the foundation of feudalism.

13. The military service attached to the feudal tenure was tolerably efficient in domestic quarrels with neighbouring lords; but if the service was protracted from any cause, it was rendered not without inconvenience, whilst it was altogether unsuitable for foreign wars. The crusades weakened feudalism primarily by forcing the sale of the petty fiefs and promoting the growth of large towns; but eventually, with more fatal effect, by consolidating nationalities or kingdoms, and diverting their energies from intestine feuds to foreign wars. In consequence, the personal service of vassals was dispensed with, and standing armies were maintained which broke the diminished power of the feudal chiefs. History, however, repeats itself; the same German nation which imposed upon Europe the feudalism that required personal service from hundreds and thousands, has, in this nineteenth century, perfected a military system, which requires the personal service of more than a million of men in Germany alone.

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VASSAL A
TEMPORARY
RELATIONSHIP.

Para. 13, contd.

14. It appears from this account that feudalism in its youth or earlier development was an emphatic testimony to the intense passion, in the human heart, for land, a passion which more than any thing else feeds the spirit of patriotism. Property in land would have been robbed of its value if the feudal lord had burdened it with oppressive services. The cultivation of the land remained with the actual proprietors, the lordship over whom was limited to definite services in exchange for military protection. The one enduring element in the system was the passion for land; the transitory elements were (*1st*) the power of the feudal lord to afford military protection, and to render other services of protection of property, and justice, which now appertain to the civil administration; *2nd*, the need in the holders of land for this protection and these services from their over-lord. The binding element or medium was the limit upon the services rendered to the lord. As time passed, the power and means of affording protection to property and life, and of rendering services of civil administration, slipped away from the feudal lords, who, blind to this destruction of the principal charter of their rights, suicidally put an end to the only other recommendation of feudalism by destroying the rights of the cultivating proprietors partly through barefaced spoliation, partly by oppressive exactions beyond the old customary services. In France, the cultivating proprietors were not dispossessed, but only ground down by oppressive exactions; from these they were delivered by the French Revolution, which thus gave free scope to the French nation for indulging that intense passion for land which is the most conservative force in human society. In England, on the other hand, the class of cultivating proprietors has well nigh ceased from the land. In the one country, the intense passion for land is the satisfied feeling of millions, in the other country of a few thousands; in republican France we see now the most conservative of all countries, and the one least distressed by the depression of trade; in aristocratic England a country charged with the elements of revolution, if the present order of things is not to subside in national decay.

15. The organization, universal in Europe, for the cultivation of land was the village commune; feudalism did not help or improve that cultivation, except in so far that it promoted security of property. The zemindars in Bengal never rendered military service, and from 1793 to 1859 they made property insecure.

APPENDIX XXIII.

LAND TENURES IN EUROPE AND UNITED STATES,—*contd.*

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1. In August 1869 the London Foreign Office addressed a circular to Her Majesty's Representatives abroad, requesting "the fullest information in regard to the laws and customs affecting the tenure of land in the several countries in Europe, with the view of ascertaining what points there may be in such laws and customs as could be usefully adopted in the settlement of land tenure in Ireland, which is a question of pressing importance." The replies were published in 1870 in a Parliamentary Blue Book. The following information is taken mainly from that Blue Book, and from other specified sources :—

2.—UNITED STATES OF AMERICA (*Report by Mr. F. C. Ford, dated 25th November 1869*).

I.—POPULATION.

(a). Census of 1860—31,443,321, including Southern States 9,103,332.

II.—LAND OCCUPATION.

(a). The system of land occupation in the United States of America may be generally described as by small proprietors. The proprietary class throughout the country is, moreover, rapidly on the increase, whilst that of the tenancy is diminishing, and is principally supplied by immigration. The theory and practice of the country is for every man to own land as soon as possible. The term landlord is an obnoxious one. The American people are very averse to being tenants, and are anxious to be masters of the soil. Land is so cheap that every provident man may hold land in fee.

(b). The possession of land of itself does not bestow on a man, as it does in Europe, a title to consideration; indeed, its possession in large quantities frequently re-acts prejudicially to his interests, as attaching to him a taint of aristocracy which is distasteful to the masses of the American people. Again, investment in land, except that held in cities, is not, as a rule, so profitable as many others. Railway, bank, and insurance stock and mortgage bonds, for instance, return a greater percentage for money, ranging from 6 to 20 per cent. There are, moreover, heavy taxes to be paid on land.

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Para. 3.

(c). The practice of the National Government is to lay off its unoccupied land in sections of one mile square, which are again divided into blocks, varying from 80 acres to 640 acres. In the New England States and the Middle States the farms are small. In the Western States farms are large, though in Michigan they average from 80 to 200 acres; at the same time, in the Western States, especially where unoccupied and cheaper lands are plentiful, occupancy by tenancy or otherwise is comparatively little known, except in the cities and villages where other than agricultural avocations are pursued. Prior to the abolition of slavery, land in the Southern States was extensively owned by large proprietors; but since the termination of the civil war, a marked tendency exists to the sub-division of properties. This change in the character of the tenure of land in the southern portion of the Union has been partially caused by the present relations of the employers and the employed. The owners of large plantations are unable to get them cultivated, and are consequently desirous of parting with portions of their land even at low prices. In the State of Virginia farms are found to-day varying from 10 to 250 acres; and in South Carolina as small as from 5 to 50 acres.

From the foregoing it appears that (1) tenancy is the exception, proprietorship of land is the rule, in the United States; (2) the great increase of cultivation which has provided the enormous exports of corn from the United States to England has been effected by small proprietors; (3) the large properties in the Southern States have been in course of sub-division ever since the cutting off of the supply of slave labour, after the Civil War, as if large zemindaries can hold together only so long as the cultivators are kept in a state of bondage, or in a material and moral condition no better than that of slaves.

3.—FRANCE (*Report by Mr. L. S. Sackville West, dated 19th November 1869*).

I.—POPULATION, 38,067,094.

II.—LAND OCCUPATION.

(a). The land is chiefly occupied by small proprietors, who form the great majority throughout the country;—property is generally divided into three classes:—

	Acres.
1.—Properties averaging 600 acres, numbering about ...	50,000
2.—" of 60 acres, " " ...	2,500,000
3.—" of 6 acres, " " ...	5,000,000

With rare exceptions, all the great properties have been gradually broken up, and even the first and second classes are now fast merging into the third. To such an extent is this the case, that even at the present moment 75 per cent. of the agricultural labourers in many departments are proprietors. The parcels of land held by them are oftentimes not more than a rood in extent, intersected by other holdings, and very often separated by considerable distances. This parcelling out of the land,

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Para. 3, contd.

although increasing every day, is to be found prevailing more especially in the departments of the Côte d'Or, Haute Marne, and Haute Saône.

(b). The land is also occupied by tenants holding from proprietors, and by "métayers," but the tenants and métayers are in many instances small proprietors themselves, so that it may be said that small properties universally obtain. M. Chateauvieux, writing in 1846, estimates the number of acres farmed by tenant farmers at 16,940,000 against 70,000,000 cultivated by proprietors and "métayers." * * Payment by share of the produce constitutes what is called the "métairie" system. In the "Code Civil" the "métayer" is called "colon partaiaire." He is a tenant who pays no rent in money, but gives to his proprietors a certain portion of the produce of the land which he farms. Formerly it was one-half. In fact it is a system by which the proprietor gives his land and the "métayer" his labour and the cultivation, for which, if either fail him, he can claim no compensation. The system is becoming less and less resorted to, and now obtains in only a few departments.

(c). It is impossible to fix an average of the number of acres which a tenant, properly speaking, farms. In many cases he will be found to be a proprietor himself, who, having amassed a certain amount of capital, undertakes to farm ("exploiter") an adjoining property. Generally speaking, the division of property naturally does not admit of large farms, except in some of the purely agricultural departments, and then they partake more of the character of experimental farms. * * It must be borne in mind that the "tenant holdings," properly speaking, bear a small proportion to other tenures, and that the tenant farmer, as before said, is oftentimes himself a proprietor. The mode of cultivation, standard of living, and employment of labour, therefore, will not be found to differ much, as a general rule, from those of peasant proprietors. The tenant farmer may be said to possess this advantage over the small proprietor (but this is by no means always the case), namely, that he is assisted by the capital of his landlord if he is an intelligent and enterprising man. The advantage of the tenant holding over the "métayer" system is universally acknowledged, and the one is gradually supplanting the other. The advantage to the soil, and to the general condition of the agriculturist from small proprietorship, has already been indicated.

(d). There are, according to M. Lavergne, 500,000 farmers, 500,000 métayers, and 2,000,000 day labourers and servants—most of them small proprietors—besides 2,000,000 of independent proprietors. He calculates that scarcely one-sixth are not proprietors. This population may be said to cultivate or live upon 500,000,000 acres of land. Its density must, however, vary to such extent, that it is impossible to draw any conclusions from it.

France, with her sound agricultural system and the general prevalence of her peasant proprietorships, was able to recover more rapidly than any other country could have done, from the disastrous economic influence of the war indemnity, and she has felt the general depression of trade less than other countries. We find that steadily there is disappearing in France the métayer tenancy; whilst in Bengal

the object of zemindars is to reduce all cultivators to the status of koorfa ryots, or cultivators on a métayer system adjusted to the zemindar's advantage.

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BELGIUM.
Para. 4.

4.—BELGIUM.

(I).—PROFESSOR T. CLIFFE LESLIE, 1867.

(a). In Belgium there is a fine climate for the growth of cereals; the soil is usually a sandy loam, producing the finest wheat crops. The country is rich in minerals. Iron is raised in immense quantities, and applied to every useful purpose; there is a great manufacture of artillery and small arms. More coal is raised than in all France; manufactures abound; there is industry in every shape.

(b). We must distinguish, however, between main divisions of Belgium, not mixing up the agriculture of the Flemings with the manufactures of the Walloons, the soil of Hainaut and of the south of Brabant with the farms of Flanders, and the sandy regions traversed by the Scheldt and Lys with the iron and coal in the valleys of the Meuse, the Sambre, and the Trouille. The truth is, that Belgium is far, indeed, from being one uniform whole; least of all is it such a whole as described in the passage just quoted. It is, on the contrary, a country remarkable for broad contrasts. The visitor finds two races, speaking different tongues, intermingling but little, jealous of each other, and, as a general rule, inhabiting different halves of the kingdom; of these races, one, occupying the northern half, famous now for its husbandry alone, though once as famous for pre-eminence in manufactures; the other, backward for the most part, by comparison, in agriculture, but holding a foremost position in manufactures, which is of modern date. He sees regions adapted to different products, and agriculture in every stage of its progress, from the first to the latest; and what strikes him more, he sees the most perfect and the most productive cultivation where the soil is most sterile by nature, and where there is no mineral wealth whatever to create for the farmer great industrial markets; while, on the contrary, agriculture is found backward, not in rude regions alone, still haunted by wolf, wild boar, and deer, but within easy reach of busy mines and a flourishing manufacturing industry.

II.—REPORT BY MR. H. WYNDHAM (*6th December 1869*), AND MR. G. A. GRATTAN (*16th December 1869*).

(a).—POPULATION.

In 1846 the population amounted to 4,337,196; in 1856 to 4,529,560. The agricultural population had slightly diminished; it amounted in 1846 (counting from the age of 12 years) to 1,083,601, and in 1856 to 1,062,115.

(b).—LAND OCCUPATION.

The system consists of (A) proprietors and (B) tenants under proprietors, and, to a limited extent, sub-tenants under intermediate tenants holding from proprietors. The total superficial measurement of

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Belgium, according to the census of 1846, was 2,603,036 hectares.¹ The lands under cultivation amounted to 1,793,153 hectares, of which quantity 618,570 hectares were farmed by proprietors and 1,202,224 by tenants. Thus, about two-thirds of the arable lands of Belgium are cultivated by tenants. The system of under-letting not being practised to any considerable extent in Belgium, the number of sub-tenants is not comprised in the official statistics.

(c). The lands held by proprietors are thus classified in the report published by the Minister of the Interior in 1850 :—

Proprietors farming—

50 acres and under	...	...	101,584	
51 acres to 1 hectare	...	...	47,726	149,310
1 hectare to 5 hectares	...	...	...	122,593
5 to 10 hectares	...	...	33,001	
10 to 25 hectares	...	...	23,506	
25 to 100 hectares	...	...	8,522	
100 and over	...	...	654	65,683
				<hr/> 337,586 <hr/>

It is observed, says the Minister in his elaborate Report, that it is in the poorer and more thinly inhabited districts that proprietors are the most apt to cultivate their own land, and, on the other hand, that the system of letting lands to tenants appears to increase notably in the neighbourhood of towns, so that in populous districts proprietors farming their own lands become comparatively rare. (Mr. Grattan.)

The bulk of the land in the hands of owners consisted in 1846 of wood lands, wastes, &c. (Mr. Wyndham).

(d). The number of tenants in Belgium, according to the Report published by the Minister of the Interior in 1850, was 234,964, of which number 145,967, or about 60 per cent., held land not exceeding half an hectare, or about $1\frac{1}{2}$ acre in extent ; 66,027 persons (about 30 per cent.) held from 1 to 5 hectares, or $2\frac{1}{2}$ to $12\frac{1}{2}$ acres ; and those holding over 5 hectares amounted to 22,970, or about 10 per cent.

(e). Since the French Revolution, feudal rights have ceased to exist in Belgium, and no tenure resembling our copyhold system exists. Land let without a written agreement is understood to be let for the term necessary for the tenant to gather in his crops ; thus, a meadow, a vineyard, the produce or fruits of which are gathered in the term of a year, is understood to be let for a year. Arable lands are generally understood to be let according to the course in which they are cultivated, *i.e.*, according to the rotation of crops. It is customary to manure the lands in such a manner as to obtain several crops in succession, as for example, potatoes, wheat, and oats, and the tribunals decide that when land is cultivated in this manner, a parol agreement must hold good for the term necessary for the farmer to obtain from his land the profit from the manure which he has put into it. (Mr. Wynham.)

(f). Leases when granted generally run for nine years ; sometimes for twelve, fifteen, and even eighteen years. When a holding is but of small extent, and there are no buildings upon it, it is often let without written agreement, and for no specific term, and sometimes it is let

¹ 1 Hectare = 2 acres 1 rood 35 perches, or nearly $2\frac{1}{2}$ acres.

with an agreement for three, six, and nine years. The system of paying rent by sharing the produce of the land is rare. (Mr. Wyndham.)

(g). Farms are generally held upon lease, but not invariably so. The usage regarding leases varies in the different provinces or districts, but the use of long leases does not appear to extend to Belgium. In some parts of the country, including the province of Antwerp, I am informed that the practice of letting farms without leases, or tenancy-at-will, is, if anything, on the increase. This system is preferred by most landlords, who, in consequence of the great competition for farms in thickly populated districts, find no difficulty in procuring tenants on these terms. As a rule, however, three years' leases are most commonly granted. Some proprietors do not give leases simply because the tenants, having full confidence in their landlords, do not require a written covenant. (Mr. Grattan.)

(h). The agricultural classes in the Flemish provinces have, moreover, a great dislike to sign any document; but did they require it, leases would of course be granted. There is a great distinction to be made between estates held by the noblesse, in the occupancy of which tenants have succeeded each other from father to son for perhaps a century, and lands recently purchased by persons in trade, or who have otherwise acquired wealth, and between whom and their tenants relations of equal intimacy cannot be expected to exist. In the latter case, leases are generally given and the highest amount of rent exacted; whereas in the former, an amicable understanding usually prevails between landlord and tenant, the tenant almost invariably meeting with liberal treatment at the hands of the proprietor.

(i). According to law, a tenant has a right to under-let or assign his lease to a sub-tenant, unless the contrary is specified in the lease,—a restriction, however, almost invariably stipulated by the landlord. It therefore rarely occurs that land is under-let in the sense implied by the French word "*souslouer*," that of yielding or assigning a lease to another person; but the practice of letting small patches of land to farm labourers, with the tacit consent of the proprietor, is very common. In some parts of the country it would be almost impossible to procure labourers, unless on the condition of allowing them a small piece of land to cultivate for their own use and that of their families. As these labourers are often, it appears, bad paymasters, a high rent is usually expected from them in order to cover the risk of loss. It does not appear to be usual in Belgium to grant allotments to labourers free of rent. (Mr. Grattan.)

(k). No law of custom exists in Belgium whereunder a tenant is considered as having a right to remain in occupation of his holding as long as he pays a stipulated rent, or a rent to be determined from time to time by a legal tribunal, or by agreement, subject to arbitration. (Mr. Grattan.)

(l). The system of tenure usual in Belgium is a lease. In the middle ages there also existed the form of tenure known by the name of *métayage*, of which, however, traces are now to be found only in some of the *polders* along the coast of the German Ocean. The cultivation of land by the intervention of a bailiff or steward, so common in Eastern Europe, is a rare exception in Belgium. The leases are, as a

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rule, very short, nine years at most,—very seldom, indeed, for so much as eighteen years. On the other hand, yearly tenancy and tenure-at-will are also very exceptional. All who devote attention to agriculture, even the agricultural societies, though consisting almost exclusively of landowners, admit that the leases are too short. The tenant is not encouraged to improve; and if he does make improvements, he can hardly be said to reap the benefit of them. The landowner will not grant longer leases, because they want, in the first place, to keep a hold upon their tenants; and secondly, to raise the rents when the leases expire. It may be said that throughout Belgium such increases of rent take place regularly and periodically. (M. Levelaye.)

It appears from these extracts that Belgium is essentially a country of small farms; that more than half of the farms are cultivated by the proprietors; that whilst the rest are cultivated by tenants, there are rarely any middlemen, and that, among the lands cultivated by tenants, a considerable proportion are allotments to labourers who pay rent for the lands and eke out their income from the lands by earnings in other industries or occupations.

5.—NETHERLANDS.

REPORT BY MR. S. LOCOCK, DATED 20TH DECEMBER 1869.

I. POPULATION, &c., a little over 3,500,000. The country called the Netherlands is a commercial and agricultural rather than a manufacturing country. Its sub-colonial possessions and its sea-indented coasts, its fat pastures and its light level soil, have given a direction to the energies of its inhabitants.

II.—LAND OCCUPATION.

(a). The system of land tenure in the Netherlands is of a double or rather a threefold kind. There are some lands (a) held by small proprietors, or at all events by farming proprietors; there are others (b) occupied by tenants holding from proprietors, but without the accompanying practice of sub-letting; and there are again others (c) where the system of tenure is closely allied to our own copyhold tenure. There are some districts where one system is far more prevalent than another, and there are other districts where the first system is to be found working side by side with the second in almost equal proportions.

(b). The quantity of land usually held by each proprietor farmer may be said to vary generally from 50 to 100 or 125 acres, according to the province. Of course there are many much smaller, but there are likewise others far larger. The largest proprietors of this kind are situated in Friesland, Groningen, and Zeeland, where one meets with farms of several hundred acres. The farms consist of single properties, more or less compact, and are very rarely intersected by farms belonging to other proprietors.

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(c). Dairy farming is very extensive, and is carried to great perfection in the Netherlands. * * The proportion between tillage and grass lands is almost exactly that of three to four; in other words, arable land may be stated to form three-sevenths, and meadow land four-sevenths of their united area. In Groningen, Zeeland, North Brabant, and Limburg, the former predominates; while in Friesland, Drenthe, Overijsel, and North and South Holland, the latter; in Gelderland, the two are nearly balanced.

(d). Hired labour is an absolute necessity on almost all farms, as may be gathered from their size, but it is not in my power to give any information based on statistics as to the average number of paid labourers per acre. About 100,000 farm labourers enter the Netherlands yearly in the month of May, and remain till after the harvests have been gathered in. Now, the total extent of land under cultivation in the Netherlands, exclusive of orchards and gardens, but including grass land, is 1,250,000 acres, so that this foreign labour would be equivalent to an addition on the average of one labourer to $12\frac{1}{2}$ acres.

(e). The size of farms held by tenants does not materially differ from that of farms cultivated by the persons owning them. * * The usual length of tenures varies according to district, generally being sufficient to cover the time required for one full succession of round crops; thus, in some parts it is the custom to grant three years' leases, in others five years, in others six years, and in others twelve years.

(f). The Legislature has never interfered in any way either for the purpose of promoting the creation of freeholds or tenancies by proprietors, or the granting of leases, or in any other way to increase by artificial means the number of owners or freeholders. It has generally been found that the landed proprietors have, without pressure, consulted their own interests and those of others, by never refusing to grant long leases, and even leases in perpetuity, as in Groningen, of unreclaimed lands, to those willing to go to the expense and labour of bringing them under cultivation, while the holdings already in existence are found to adapt themselves in size to the requirements and means of the tenants. As to forcible creation of freeholds, rent is low in the Netherlands, and a tenant can obtain a lease on such terms that he seldom is tempted to look on it as a grievance that its proprietorship is denied him.

6.—HANSE TOWNS (*Report by Mr. J. Ward, 5th November 1869*).

I.—HAMBURGH.

(a). POPULATION, 302,581 souls. The larger portion of the population is employed in commercial and maritime pursuits, but one-third of it depends upon manufactures; and the number of persons who derive their subsistence from the cultivation of the soil is little more than 9,000.

(b).—OCCUPATION OF LAND.

The land throughout the Hamburg territory is in the hands of small proprietors, who live in their own houses and cultivate their own soil. The size of the properties varies with the locality. There are no instances

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of farms let to tenants on lease or otherwise, with the exception of the islets on the Elbe, which are State domains, and farmed by the lessees of the state under peculiar circumstances.

HANSE TOWNS. II.—BREMEN.

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- (1). POPULATION, 109,878 souls.
- (2). The whole of the land in the Bremen territory is in the possession of the cultivators of the soil, with the exception of a few isolated cases, in which leases have been granted. There are 3,229 distinct properties, of which 1,647 are under 5 morgen, 1,278 from 5 to 100 morgen, 291 from 100 to 300 morgen, and 15 above 300 morgen. One morgen is equal to 2 roods, 21 perches English measure.

III.—LUBECK.

- (1). POPULATION, 49,183 souls.
- (2). Land, one-half in large farms, is the property of private persons; the other half belongs to the State or to corporations, and is let on leases, in small farms, which do not exceed 30 acres.

7.—SCHLESWIG HOLSTEIN.

- (a). POPULATION, 981,718 souls.
- (b). OCCUPATION OF LAND:—The greater part (certainly more than half) of the lands within the Duchies belongs to noblemen and other large proprietors, who parcel them out and let them to farmers upon lease. The rest of the soil is in the hands of peasants and small proprietors who live upon and cultivate their own land.
- (c). The average size of the large estates is from 4,000 to 6,000 English acres. There are, however, some larger properties. These estates are divided into farms varying in size from 100 to 1,500 acres; for instance, the estate of Quarubeck, bordering on the Schleswig Holstein Canal, the property of M. Scheller, comprises about 4,000 English acres. It is divided into the Mansion-house farm of 1,200 acres, two smaller dairy farms of 600 and 400 acres respectively, and five or six villages distributed into small farms of from 100 to 200 acres each. The whole of this land is let on lease at a rent of 13 Prussian dollars per tonne, or 39s. per English acre, inclusive of all services and demands upon the tenant. It is difficult to obtain a higher rate of rent; some farms are let rather lower, but for good land it may be taken as the present price.
- (d). The farms are let on written contracts, or leases, for terms of seven, fourteen, or twenty-one years; mostly for one of the two latter terms.

8.—SAXE COBURG GOTHA.

I.—POPULATION, 169,000.

II.—OCCUPATION OF LAND.

- (a). By far the greatest part is occupied by small proprietors. Generally speaking, tenants exist only on large properties belonging to the Ducal House, and where there is a Manor House, and on properties belonging to the Church and Rectories, and to towns.
- (b). Sub-tenants under intermediate tenants scarcely exist.
- (c). No statistical information is to be procured as regards the proportions of these several systems, but it is presumed that nine-tenths of all

landed property is in the hands of land-owners, and one-tenth in those of tenants.

(d). The smallest property belonging to one owner, and who depends on the cultivation of it as the means of existence, may be rated at 33½ English acres each. Whole properties lying together are very rare.

(e). Generally speaking, there are only tenants on large properties, as little can be gained by the lease of small farms, and a tenant seeks therefore the lease of at least 450 English acres.

(f). The duration of a tenure is from 12 to 18 years. If the tenant dies during this time, and one of the heirs is willing and capable of undertaking the tenure, he is considered to have a claim to it—at least as long as until the term is expired.

9.—PRUSSIA AND NORTH GERMAN CONFEDERATION—(*Report by Mr. Harriss Gastrell, 27th October 1869*).

I.—POPULATION, &c.

Population before Sadowa, 19,663,524, or somewhat more than the rest of Germany. In 1867, a little over 24 millions, including 7½ millions in towns. In Prussia, 60 per cent. of the yearly production and consumption originate in the possession of land; 41 per cent. of the population live directly by agriculture, and 11 per cent. are auxilially engaged in agriculture. Prussia is rich in useful minerals, coal, iron, zinc, lead, and copper. Besides her mining industry, Prussia has a very important manufacturing industry, which has made an immense stride, especially in the last decade. But the surprising fact is patent that Prussia within fifty years has passed from the condition of an almost entirely agricultural land to that of a largely manufacturing as well as an importantly agricultural land.

II.—OCCUPATION OF LAND.

(a). The statistics relating to land in the official Agricultural Year Book for 1858 were fuller than those for later years. The distribution of properties in 1858 was as follows:—

	Under 3½ acres.	From 3½ to 20 acres.	Total.	From 20 to 200 acres.	From 200 to 400 acres.	Over 400 acres.	Total.
Rhineland ...	564,759	205,446	770,205	49,524	1,608	4,137	825,474
Westphalia ...	121,825	75,537	197,362	46,179	1,401	706	245,648
Saxony ...	105,899	66,825	172,724	41,103	1,603	1,224	216,653
Silesia ...	121,078	109,725	230,803	49,159	1,204	3,003	284,169
Total ...	913,561	457,533	1,371,094	185,965	5,816	9,069	1,571,944
Brandenburg ...	66,963	45,763	112,626	49,428	2,343	51,771	216,168
Pomerania ...	32,653	29,099	61,752	26,247	1,436	2,595	92,090
Posen ...	24,792	32,852	57,644	45,232	1,082	2,656	106,614
Prussia ...	49,212	44,581	93,793	82,961	4,451	4,137	185,342
	173,520	152,295	325,815	203,868	9,312	61,159	600,154
Grand Total ...	1,087,081	600,828	1,686,909	389,833	15,128	70,228	2,172,098

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(b). In 1858 the large proprietors, *i.e.*, proprietors of more than 400 acres, formed scarcely a one hundred and twentieth part of the aggregate of land-owners. It is the practice of land-owners, even of large entailed estates, to farm their land either directly under their own superintendence or indirectly by a bailiff. This is so universal that it will suffice to deduct, say, 5 per cent. from the total of large proprietors in 1858, to obtain approximately the number of large land-owners who then farmed their own land.

(c). The middle proprietors are those who hold land in quantities from 20 to 400 acres. They number 404,871, and with their families about 1,500,000. These 400,000 and the upper 600,000 of the small proprietors form the independent yeomanry and the proprietary peasantry of Prussia, but of course include some owners of privileged estates, and a few others who do not belong to the peasantry, as a class, with their families. These are computed to number nearly 4,000,000 persons, that is, more than one-fifth of the total population. They form, in all probability, the most valuable section of Prussia's population,—not the most wealthy section, but the most valuable to the nation. The team-requiring peasant farms nearly coincide with the middle properties, or farms of 20 to 200 acres. * * The limit of 20 acres is in some provinces too little to constitute a team-requiring farm, and too little to support a family decently; but in other provinces it is more than enough to do both of these things.

(d). The number of small proprietors was about 1,400,000 in 1858. Of these, a considerable number possess sufficient land to support themselves and their families. The minimum for this purpose is 7 acres, or thereabouts, in very fertile and well favoured districts, and increases, according to the decreasing local disadvantages, to 20 acres or more. If the number of peasant farms, not team-requiring, be taken for a guide, then the number of the proprietors of the above minimum may be estimated at about 600,000. It is not intended to affirm that all these 600,000 owners are able to bring up families in average comfort and without occasional straits, but that they rely entirely upon the productiveness of their agricultural labour on their land, and in average times keep poverty at a great distance, and are in a position by great thrift to increase the ease of their position. The remaining small proprietors fall mainly into the category of persons only auxiliarily occupied with agriculture. It will be borne in mind that the figures of 600,000 are only approximative, and have been stated in knowledge of the difficulties of the subject, which have been previously pointed out. That they are not very inaccurate, can be inferred from the following considerations: the 400,000 middle proprietors, of which the accuracy of the return is not doubted, form, together with these 600,000, a total of 1,000,000, which corresponds, after certain allowances on both sides, with the return of 1867 of over 1,000,000 owners, tenants, &c., engaged in agriculture.

(e). With regard to the remaining 800,000, who are day-labourers, or who have another industry, either as their chief occupation or as auxiliary to their agriculture, little need be said. They form an important class of land-owning agricultural labourers, contain also many artisans, and probably include the small industrial people of the villages. At any rate, these 800,000, and the 350,000 who possess houses without land, make

together 1,150,000 persons, who sub-divide into these three chief categories.

(*f*). The following table (not reproduced here) sets forth the facts that in the provinces of Prussia and Saxony, the so-called rustic properties, which are, in fact, the property of the yeomanry and peasantry, occupy a half of the province, and the large non-peasant private properties have scarcely one-fourth or one-sixth of it; and that the average of the former throughout the six eastern provinces is as great as the acreage of the latter.

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III.—SILESIA—(*Report by Consul White, 22nd December 1869*).

(*a*). But there exists in Silesia a third mode of letting tilled or grass land, detached from an estate or from a farm, and unenclosed, without either stock or buildings of any description; in fact, the bare land, at so much an acre, for three, but generally for six years. These kinds of leases are sometimes made direct with the tenants, but generally through the intervention of a middleman, who sublets the land leased, by dividing it into small lots or patches of a few morgen, or even less. This middleman of course charges a percentage for his trouble and for his responsibility for regular payment of rent; this addition to the rent coming, of course, out of the pockets of those who cultivate the soil thus let.

(*b*). This system of letting bare fields is known in German by the name of "Ackerpacht," and prevails in almost every part of Silesia, but particularly in those districts where the small holdings predominate, or where there is a class of cottiers or other labourers chiefly dependant for a livelihood on wages.

(*c*). It appears that the rent of land which may be obtained in this way is much higher than any that could be obtained in any other way, and that many landlords avail themselves of the advantages offered them by the prevailing desire of the inhabitants of towns, or of industrial districts, in devoting a portion of their fields to that purpose.

(*d*). It appears that there are in the province of Silesia, in the rural portions of it alone, 59,811 owners of houses, without any land attached to them or cottiers, besides the existence of many others similarly situated (21,445) in the towns. All these people are but too glad to be able to do some farming on a small scale; and it is this disposition on their part, and their wish to grow their own potatoes and vegetables, which has produced this sort of arrangement, the only possible one to a certain class; and I have heard no complaints made on the score of the high rent which it presupposes.

(*e*). When it is considered that a large tract of country is owned by peasants in Silesia (7,500,000 of morgen, out of a total area of 15,781,000), this is certainly the last place where one expects to meet with the letting and sub-letting of small patches of land, and with the existence of middle-men, even though they be but few; and this state of things reminds one somewhat of Ireland.

(*f*). It must, however, be borne in mind that not only is this arrangement felt to be highly acceptable to the parties chiefly interested, but likewise that these parties either hold already some land of their own as freeholders, or at least a cottage, and are thus at least partially inde-

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pendent; and that, moreover, it is for their benefit that they are desirous of extending their farming, and are disposed for that purpose to offer the payment of rent at a rate higher than would be likely to be agreed to by any other tenant willing to lease the estate with all the charges, risks, and repairs, which altered the farming of an estate, with its buildings, stock, and with the necessity of being provided with capital.

10.—WURTEMBERG.

I.—POPULATION.

According to census of 1867, the population* was 1,899,906 inhabitants. Over 4 millions acres are cultivated, or 65 per cent. of the whole amount, while the forest, one of the principal sources of wealth, extend over an area of nearly 2 million acres, or nearly 30 per cent. of the whole. Agriculture is the principal occupation of the mass of the population, and cattle-breeding on a moderate scale. There are numerous small manufactories of linen, cotton, hosiery, woollen cloths, cutlery, tobacco, glass-toys, &c. * * As a rule, the impulse given by the State to all industrial undertakings has been carried too far for the requirements of the population, and Government assistance has been afforded to a mass of industrial occupations (as well as to provide technical instruction on the same) which do not in many cases repay the outlay invested on them.

II.—LAND OCCUPATION.

(a). The system of land occupation in Wurtemberg is now almost entirely by small proprietors, by whom nearly the whole land is held. The few tenant farmers in the country are upon the State or Royal properties, or those belonging to the wealthier of the nobility or mediatised Princes, but farms held by such tenants are seldom less than 200 acres in extent, and, as is subsequently mentioned, are almost always men of a very superior class, who practise high farming and have undergone a practical and theoretical agricultural education at the Royal Agricultural College at Whenheim.

(b). The number of landed proprietors in 1857 was about 330,000. The area of the whole country being about 6,000,000 acres, and of that, about 4,000,000 acres being devoted to agriculture, each property would on an average consist of about 12 acres. It must be borne in mind, however, that of the 330,000 proprietors, only 150,000 are actually independent farmers; while 180,000 are, though actually proprietors of land, not really farmers, but, though cultivating their small patches of land, gain their livelihood as day-labourers, or else by industrial pursuits.

(c). The 150,000 farmers may be divided as follows :—

Farmers.	Possessing farms of	Average size of property.
14,000	More than 50 acres	93 acres.
15,000	From 30 to 50 "	37 "
55,000	" 10 to 30 "	18 to 19 acres.
50,000	" 5 to 10 "	7 or 8 "
16,000	About 5 acres or less	3 to 4 "

The quality of the soil, and the nature of the farming, as well as the situation of the farm, may considerably alter its relative importance.

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(d). The smallest quantity of land held by tenant farmers would, as a rule, be from 50 to 100 acres; these farms are, however, for the greatest part from 100 to 250 or even 500 acres in extent. But there are very few tenants in Wurtemberg, and those chiefly on land belonging to the State, the Royal Family, and the great landed proprietors among the nobility, in so far as such land is not occupied by forests, which, without exception, are never let.

(e). The whole of the State property is occupied by tenants, to whom it is let, in general, on long leases (as a rule, eighteen years) by public auction, the administration not, however, binding itself to accept the highest bid. Sub-tenancies are not permitted, inasmuch as the State attaches the greatest importance to the character, agricultural education, and antecedents of the tenants who have, in the case of the larger farms, to deposit a security for the due fulfilment of the conditions of the lease as to artificial manuring, mode of cultivation, amount of live-stock, &c. The properties of the mediatised Princes, and of the large land-owners, are administered on the same system; though, in all these cases, isolated or outlying pieces of land are exceptionally let out to small proprietors in the neighbourhood, but on short leases.

11.—BAVARIA —(*Report by Mr. H. P. Fenton, 20th January 1870*).

I.—POPULATION, 3rd December 1867, 4,824,421 persons.

II.—OCCUPATION OF LAND.

(a). The system under which land is held in Bavaria is almost universally that of occupation by the proprietor himself, the great mass of the occupiers being small or "peasant" proprietors. Occupation by tenants or sub-tenants is a rare exception to the general rule. Practically, land occupation is in this country almost synonymous with ownership of land.

(b). As a rough estimate by the Secretary General of the Agricultural Society of Bavaria, the total number of land-owners of all classes in Bavaria may be assumed to be somewhere about 500,000, of which total only about 100 are proprietors of estates, or of an aggregate of land (within the Bavarian territory) exceeding 1,000 Bavarian acres in extent.

(c). The holdings of the peasant proprietors vary greatly in point of size in different districts; but, as a general rule, it may be assumed that these holdings are largest in the provinces of Upper and Lower Bavaria, Swabia, and the Upper Pfalz. They are less considerable in the three Franconian Provinces, and smallest of all in the Rhenish Palatinate. From 40 to 50 acres may be considered as a minimum (except in the Palatinate, where the average would be much lower), and about 200 Bavarian acres as the maximum extent of a peasant property. There are some few proprietors of this class who own as much as from 300 to 400 Bavarian acres, but they are quite exceptions to the general rule.

(d). This estimate of the usual size of the holdings is, I should however state, only intended to apply to that class of peasant proprietors who may be considered as agriculturists and nothing else, that is to say, who occupy themselves with, and make their living exclusively out

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of the profits derived from, the cultivation of the land they possess; and not to that numerous class who, whilst owning a small plot of ground which they themselves cultivate, derive their chief support from some trade or profession carried on in their village, or from their calling as day-labourers.

(e). It would further appear that, generally speaking, the lands constituting the peasant properties do not lie altogether, but are divided into several plots intersected by other properties of the same description. Indeed, in some districts much inconvenience has frequently been found to arise from the extent to which the small properties are split up into portions of land lying separate one from the other.

(f). It may be laid down as a very general rule that small proprietors of land in Bavaria do not live on their properties, but reside in villages or small groups of dwellings.

12.—AUSTRIA—*Report by Mr. Lytton, now Lord Lytton, 15th January 1870.*

I.—LAND OCCUPATION.

(a). It was not till the year 1848 that the feudal system was completely abolished throughout the Austrian empire. Previous to that period the Austrian peasantry were serfs. They were legally subject to forced labour, and it was by the forced labour of peasants that the estates of the great proprietors (the feudal seigneurs) were cultivated.

(b). In return for this forced labour, however, a certain portion of land was allotted by his feudals eigneur to the peasant serf, and cultivated by the latter exclusively on his own behalf and to his own profit. Under this régime, therefore, the peasant, although a serf, was also a proprietor. Subject to certain duties payable on transfer, &c., to his feudal superior, the serf, or bondsman, was legal owner of the land he cultivated. He could sell it; he could transfer or bequeath it by testamentary disposition. Practically, all such transactions were impeded by the difficulty, expense, and inconvenience of them; but legally, the right of transfer, mortgage, and bequeathal, invested the bondsman with a proprietary character.

(c). The land laws of 1848-49 abolished the feudal system in Austria, with all its privileges, exemptions, and monopolies. The Austrian peasant was thereby converted from a peasant serf into a peasant proprietor, that is to say, the conditions of forced service and feudal impost, under which he previously held the land allotted to him, were then removed, and he was invested by the State with the free and unconditional ownership of it. * *

(d). The laws of 1848-49 created, it is true, an entirely new class of peasant proprietors, and that class is now, on the whole, a thriving one. But those laws left intact the old class of great proprietors, whose properties are at this day as large as (and much better cultivated and more remunerative than) they were previous to 1848. The legislation of 1848 in Austria did not turn tenant-farmers into proprietors, for the bondsmen whom it emancipated already were proprietors. It simply converted feudal proprietorship into free proprietorship. It did not deprive the great proprietors of their properties; it only deprived them of certain feudal rights over the property of others.

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(e). (1). In the Alpine districts of Austria (the Tyrol, for instance, Salzburg, Carinthia, a great part of Styria, and the mountainous parts of Upper and Lower Austria) the average size of peasant properties is from 30 to 40 acres; and in some parts of the country, where the woods are not State property, many peasant proprietors own as much as from 1,500 to 2,000 acres a piece, about 1,000 acres of all such properties being entirely wood land.

(2). In the mountainous districts, where intercommunication is difficult, these small properties are generally held together. In the low land country they are often intersected by other estates, or held in separate lots.

(f). (1). In those provinces where agriculture is most scientific and most productive, *viz.*, Bohemia, Moravia and Silesia, it is practised on a large scale; and the greater part of the soil is in the hands of the great proprietors, who, from time immemorial, have possessed estates of wide extent. Each of these great domains may be reckoned, on the average, at not less than 10,000 acres of arable land, and from 6,000 to 10,000 acres of woodland. The area of many of them is even as much as 60,000 acres. They are cultivated with great care and skill on the most approved methods. About one-third of the whole land of Bohemia is absorbed by these large estates.

(2). The petty estates belonging to peasant proprietors form but a very small proportion of it. The average extent of such estates is from 15 to 50 acres. But a very large number of the Bohemian peasantry possess only a small patch of garden ground; and, as the produce of it is insufficient to support them, this class of the peasantry hire themselves out as agricultural labourers to the larger proprietors. The proportion of the larger properties of the Bohemian peasantry to these small ones is as one to three.

(g). In Upper Austria (exclusive of the mountainous districts above mentioned) small proprietors are the predominant class. The average size of a peasant property in the low land country of Upper Austria is from 40 to 60 acres. But many of these properties are not less than from 200 to 300 acres in extent.

(h). In Lower Austria (exclusive of the mountainous districts above mentioned) the state of agriculture and the distribution of landed property are similar to those of Bohemia and Moravia. Here large properties prevail, and form about three-tenths of the whole productive soil of the province, with a total area of 1,009,816 acres.

(i). In the lowland districts of Styria and Carniola, the land is chiefly in the hands of small proprietors. In the last named province especially, the dispersion of property is very great. This fact is chiefly attributable to the conquest of the province by Napoleon I. As part of the kingdom of Illyria, Carniola was thereby subjected to the French Code, which abolished all previously-existing limitations of the right of division and descent,—limitations which were not abolished in the other Austrian provinces until last year.

(k). In Galicia, three-fifths of the whole productive soil of the province is cultivated by large proprietors, whose estates vary in extent from 1,000 to 20,000 acres. A property of 20 acres is in that province considered sufficient to maintain a peasant family. Some peasants,

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however, only possess from 1 to 2 acres of land a piece; and these, like the same class in Bohemia and Moravia, maintain themselves and families by the wages they earn as agricultural labourers. The local tribunals greatly facilitate the dispersion and division of land in Galicia.

(l). In the Bucovina, again, large estates prevail. These large estates, however, chiefly consist of woodland; and some of them are of gigantic extent. Two of them, which, until the other day, were State property, comprise forests which cover 164,000 and 117,000 acres of land.

(m). From all the preceding statements it will already have become apparent that the tenant-farming system, common to Great Britain and Ireland, is practically unknown in the Austrian empire. Here the tenant system is quite exceptional, and unmarked by any interesting feature.

(n). Rent is usually by share of the produce, the proprietor, often, but not always, supplying the seeds and manure. In the most fertile, and parts of those few provinces where tenancies exist, the tenant's share is one-half or one-third, and in the less fertile parts three-fifths or four-fifths of the produce.

13.—ITALY SOUTHERN PROVINCES—(*Report by Consul General E. W. Bonham, dated 6th November 1869*).

I.—POPULATION, 6,000,000.

II.—LAND OCCUPATION.

(a). The land is principally occupied by tenants under proprietors, to a far less extent by small proprietors, and still less by sub-tenants under intermediate tenants. The relative proportions of these different systems cannot be ascertained, but there can be no doubt the main occupation is by tenants under proprietors.

(b). The size of peasant properties varies in different provinces:—10 to 60 acres in the provinces near Naples; generally not exceeding 8 to 10 acres in the Calabrias, and many even smaller holdings on the Adriatic Coast. These small properties are chiefly in the vicinity of towns, and frequently intersected by other properties. The small proprietors usually live in the adjacent villages, not on their farms.

(c). The size of farms leased to tenants varies greatly—from 2 to 200 and 300, and even occasionally to 1,000 acres. The duration of a lease is usually four to six, very rarely eight years. In almost all cases, payment to proprietors is made by a fixed amount of money, rarely in kind; in still more rare cases, the Mezzadia or Colonia, as in Lombardy, exists in these provinces, when the landlord gives the land and certain implements, the tenant finds the labour, and the produce is divided between them in the ratio fixed in the agreement.

14.—ITALY, PIEDMONT—(*Note by Consul Colnaghi, January 1870*).

I.—LAND OCCUPATION.

(a). The abolition of fiefs, the influence which the French occupation at the beginning of the century exercised over the legislation of Piedmont, especially with reference to the laws of inheritance, and the

unquiet condition of the country at the same period, may be cited as among the principal causes which gave rise to a system of land occupation differing from that of the large estates which existed before 1789. The recent sales of lands belonging to the State and to the Church may be considered as steps further tending to the sub-division of landed property.

(b). Land occupation varies according to the nature of the country and the character of the rock. The whole territory may be classed in three distinct divisions—

1st.—In the hill region, and more particularly where cultivation of the vine obtains, the land is chiefly in the possession of small and medium proprietors. In some mountain parts, as in the districts of Ossola and Aosta, property is sub-divided into small lots on an average from $\frac{1}{2}$ to 3 hectares, and a system of “petite culture” is adopted suitable to the nature of the land and of the country.

2nd.—In the non-irrigated plains, where corn is cultivated on a large scale, small properties, though it may be less frequent, are still to be found in considerable numbers.

3rd.—In the fertile and irrigated plains, especially where the cultivation of rice is common, as in the districts of Vercelli and Novara, large estates are the rule. The land is divided into properties, varying between 40 and 1,000 hectares, and even more, which are, in general, leased out to farmers, who form an important and wealthy element of the rural population.

(c). The proportion of small proprietors, who are owners of from $4\frac{1}{2}$ to 20 hectares, to large proprietors, may be calculated very approximately, at the proportion existing between mountain and plain land, *i.e.*—

Mountain (small proprietors)	...	...	0.774
Plain (large “ ”)	...	...	0.226

The medium proprietors, holding from 20 to 50 hectares, may be considered as equipoised in the two territories.

(d). The above calculation does not give the proportion between proprietors and tenants. The metayer system is common on the small properties, and the metayers form too important a class to be left out of the question; but I have no data to serve on this head.

(e). The average extent of free-holds possessed by the peasant proprietors may be considered—

(1). For mountain districts to be from $\frac{1}{2}$ to 3 hectares.

(2). Among the vine-cultivated hills of the district of Casale (province of Alessandria), where favourable examples of the advantages attaching to small properties may be found, the average extent of free-holds is from 6 to 20 hectares.

(3). In great part of the district of Tortona (same province), five-tenths of the proprietors hold small free-holds of from 10 acres to 10 hectares in extent; three-tenths of from 3 to 10 hectares; the remaining two-tenths are possessors of properties ranging from 10 to 100 hectares.

(4). In the province of Turin the free-holds cultivated by the owners themselves are, on an average, from 2 to 3 hectares in extent.

(f). In general, the small free-holds are cultivated by the proprietors themselves. When this is not the case, they are usually farmed on the “metayer” system, to which, as a tenancy, reference will be made under heading (B). On the properties, however, which are too large to permit

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the labour of the owner and his family to suffice for their cultivation, hired labourers are employed.

(g). The agricultural labourers are divided into two distinct classes, the "bifolehi" or "boori" (ploughmen or permanent labourers), who are also called "famigli" and "schiavandari" in some districts, and the "braccianti" (day labourers or casual labourers).

(h). The permanent labourers are hired by the year, but they often remain a long time on the same property. They are lodged, with their families, at the farm, not, however, too commodiously, and are paid partly in money and partly in kind. The system existing—and which may not be unworthy of attention—is to interest the labourer in the results of his work by confiding to him a portion of land for cultivation, of which he shares the produce.

(i). The quantity of land held by tenants under landlords in Piedmont varies from the smallest plots, in some few cases, over 1,000 hectares.

(k). The tenancies may be divided into two distinct classes; land held on the "metayer" system, and simple tenancies for a money rent.

(1). The "metayers" are a species of farmers sharing with the proprietor half the produce of the soil. Each "metayer" holding is large enough to give employment to one family of peasants. The house, which always stands on the property, is kept in repair by the proprietor, and the "metayer," in general, pays no rent. The farmer must possess from two to four oxen, according to the extent of the ground he has to cultivate, ploughs, harrows, and all the requisite agricultural implements. If there are vines, the proprietor is obliged to supply the props. The "metayer" farms are generally held by the year, six months' notice to quit being required on either side. In some districts, however, they are held for nine years, though terminable at the end of each triennial period on the usual six months' notice being given.

(2). The regular tenancies for a rent in money are usually held for nine years; sometimes for twelve, fifteen, or even eighteen years, in the case of the larger estates. Leases also run for three and six years. Estates belonging to charitable institutions are never let for longer than a nine years' lease, which is often terminable at the end of each triennial period.

(3). The rent of the "metayer" farms is paid by sharing the produce of the soil with the proprietor, except for the meadow lands, for which a rent is paid, unless, indeed, the first crop of hay, called "maggrengo," is made over to the proprietor. For the other tenancies, the rent is always paid in a fixed sum of money, to which generally certain appendices are annexed, as a sack of rice or wheat, or Indian corn, the carriage of produce or materials, if required, &c.

15.—ITALY, LOMBARDY (*by Consul Colnaghi*).

(a). The characteristics of the different provinces, the methods of cultivation, and the systems of tenancies, vary according to their position, the degree of fertility, and nature of the soil, and the capabilities for irrigation. For facility of description, however, the whole territory may not inconveniently be divided into three great agricultural zones marked out by nature.

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(1). *Upper Lombardy*, formed of the mountains of the provinces of Bergamo, Brescia, Como, and Sondrio. This division contains the four important lakes of Maggiore, Como, Isco, and Garda, forming the reservoirs for the irrigation of the plains. The products of these mountain districts are obtained by the hard labour of the owners of the soil. A system of "petite culture" is adopted throughout the territory.

(2). *Central Lombardy*, the district of the hills, and non-irrigated plain, situate between the mountains and the lands where irrigation begins to be practised. It contains portions of the provinces of Milan, Bergamo, Como, and Brescia. The whole of this region is not equally productive. The western part of the Upper Milanese consists of land conquered from the heaths ("brughiere"). The eastern part is more favoured by nature, as are also many districts to the east of the Adda, which are included in this division. In the other portions of this zone the fertility is not continuous, and the perseverance of man was put to hard proof in reducing to cultivation large tracts of sterile land. The vine and mulberry tree are the most important products of this region. The population is very dense, and suffices not only for the cultivation of the soil, but for the advancement of manufacturing industry, which is widespread throughout the district.

(3). *Lower Lombardy*, consisting of the irrigated plains of the provinces of Milan, Pavia, Cremona, and Mantua, but containing as well, in the southern districts, some non-irrigated lands. The separation between the irrigated and the upper plain is gradual, each district blending with the other. The country offers a very different aspect to the second zone: the fields are intersected by canals and rows of trees in monotonous succession. Social life is less active than in Central Lombardy; the population is more scattered, and industrial enterprises are concentrated in the towns and larger villages, not spread over the country districts.

LAND OCCUPATION.

(b). (1). Corresponding, on the whole, with the division of Lombardy into three zones, the landed properties may be separated into three categories:—

- (1). Small properties under 15 hectares.
- (2). Medium properties from 15 to 100 hectares.
- (3). Large properties above 100 hectares.

(2). The small properties are more especially the tenure of Upper Lombardy, where the proportion of proprietors to the total population may be taken as 1 to 3, except in the immediate neighbourhood of the towns, where it is as 1 to 11. In this region the communes hold the largest estates, consisting exclusively of extensive possessions in woods and Alpine pasture lands; they are, however, no longer of the importance of former times. The average size of the small properties cultivated by the owners themselves may be calculated at from one-third of a hectare to three hectares. They are not always held together, but the different portions are often intersected by other properties, a natural consequence of the sub-division of land. In some districts of the Valtellina, a family of peasants unite various kinds of tenure, as co-proprie-

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tors of communal pastures and woods, having domicile in a certain commune, owners of a small freehold, lessees of a little meadow, and cultivating a neighbour's land on the "metayer" system.

(3). The second zone is the seat both of medium and small properties. Here the proportion of proprietors to the total population may be taken as 1 to 13. The most important estates (now that the church property has been taken over for sale by the Government) are in the hands of hospitals and other charitable institutions.

(4). The large estates are to be found in the irrigated plains of Lower Lombardy, though small properties are not uncommon in the less or non-irrigated portion of the territory. The proportion of proprietors to the total population is as 1 to 20, with a tendency to increase the size of the estates.

(c). The small mountain free-holds are always cultivated by the proprietors themselves; an owner alone would give the loving labour requisite to render the rocky mountain slopes productive. In the neighbourhood of the towns and valleys, where the properties may be somewhat larger, and are in the hand of the trading rather than the peasant class, they are generally cultivated on the metayer system, or, if consisting of meadow lands, let out for a money rent. Cases also occur in which small tradesmen have their little properties cultivated by hired labourers under their own superintendence.

(d). In the hill districts and upper plains, the majority of the properties are cultivated under the metayer system, or a modification thereof. The estates belonging to charitable institutions are always leased out by public auction to farmers, who may, perhaps, more properly be termed contractors ("appaltatori"). They do not cultivate the lands themselves, but sub-let the different small farms on each estate to metayers (a most unfavourable system for the sub-tenants). This is the principal instance of sub-tenancies which I have noticed in Lombardy, and here the tenant-in-chief really acts the part of factor, or collector, for the charity. Some large private land-owners manage their property with the help of a bailiff ("fattore"), but the soil is usually cultivated on the metayer system.

(e). The irrigated plain, for the most part, is leased out in large farms to well-to-do tenants for a rent always in money. The average size of the tenancies is from 100 to 300 hectares. The ordinary duration of the lease in these tenancies is for nine years on the smaller estates; from nine to twelve years,—sometimes, not often, extending to fifteen or eighteen years,—in the larger properties. The leases under which the estates of charitable institutions are held never exceed nine years, and in some districts are terminable at the end of each terminable period.

(f). The farms held on the metayer and corn rent systems are let out by the year, six months' notice to quit being required on either side. They are, in general, allowed to run on without formal renewal for an indefinite period.

(g). In Lombardy the true "mezzadria" is only preserved in the province of Bergamo, where it extends not only into the mountain districts, but even over a large portion of the irrigated plain. Its conditions are the same as in Piedmont, namely, half produce, the peasant contributing his labour, and also the working capital in seed, farm implements and cattle. The land and other taxes west of the Adda are generally

divided into equal shares between population and tenant; east of that river they are generally paid by the former.

(4). In other provinces, there are modifications of the "mezzadia" contract; the principal of these is corn rent. The immediate products of the soil are subjected to a fixed rent in kind, generally wheat as the most marketable cereal, and the one less liable than the others to be injured by atmospheric influences, as being harvested before the season of hailstorms. In light soils, however, part of the rent is occasionally allowed to be paid in rye; vines and cocoons, however, are divided "à mezzzeria," and the money rent for the house and meadows and the "appendizi" are the same as in the province of Bergamo.

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16.—PORTUGAL—*Report by Mr. G. Brackenbury, 4th December 1869.*

I. POPULATION, 3,986,558 inhabitants, a number supposed by competent judges to be below rather than above the mark.

II.—OCCUPATION OF LAND.

(a). The system is fourfold, *viz.*, by (1), small proprietors; (2), tenants under proprietors; (3), métayers; (4), emphyteutas. The last are occupiers by a tenure analogous in many respects to the copyhold of England, the rent being fixed, and the tenant irremovable; and they are by most Portuguese writers referred to the class of small proprietors.

(b). These modes of tenure vary more or less directly with certain broad geographical divisions of the country which have been adopted by most of the writers on rural economy. These agricultural regions are—

(1). THE NORTHERN REGION, which embraces the six administrative districts of Vienna do Castello, Braga, Oporto, Aveiro, Vizen, and Coimbra, and contains 1,892,836 hectares, with a population of 1,853,397 inhabitants, which gives nearly 100 inhabitants per 100 hectares. This is the most thickly populated part of Portugal, and here small proprietors abound, and the "petite culture" prevails. It is stated that in parts of the district of Vienna the large properties are to the small as 1 to 15; in other parts, as 1 to 10; while the number of small proprietors nearly equals that of the day labourers. The configuration of this region is generally mountainous, and the natural fertility of the plains and valleys is augmented by irrigation, or by alluvial deposits from the rivers. The cereal chiefly cultivated is Indian-corn; in this region also is comprised the famous wine-growing district of the Douro.

(2). THE CENTRAL REGION extends from the valley of the Mondego to the south of the valley of the Tagus, and comprises the three administrative districts of Leiria, Santarem, and Lisbon. Its general aspect is not indicative of fertility, and with an area of 1,770,394 hectares, it has only 836,555 inhabitants, or 47 per 100 hectares. Although containing much poor and worthless land, many of the valleys, and the great basin of the Tagus, receiving, as it does, the rich deposit of the river, show great fertility. The defective conservancy of the river, and the consequent flooding of good land at the period of freshes, undo, however, much that labour accomplished. The land at such times is covered with sand, or remains under water, and it is said that there is no district of the country where marshes and fens are more numerous than here. In this

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region large and medium-sized properties prevail almost equally, and small properties and "la petite culture" are therefore rare. Owing to its central position, wheat, the southern crop, and Indian-corn, the prevailing crop of the north, are cultivated in about equal proportions; while the rice crops exceed those of all the rest of the kingdom. Of live-stock, the production is comparatively small. The farms are held by tenants under large proprietors, and under owners of medium properties.

(3). THE SOUTHERN REGION is in area the most extensive; in population, the thinnest of the four agricultural regions. The soil is for the most part thin, poor, and sandy, though interspersed occasionally with lands of a heavier and more fertile character. The land is cultivated by tenants under large proprietors.

(4). THE MOUNTAINOUS REGION, as its name indicates, is the highest elevation of the four regions; the density of its population is double that of the southern region; in this, as in the northern region, the "petite culture" is in the ascendant, and small and perhaps medium-sized properties are the rule.

(d). The total want of any official statistics in regard to land tenure in Portugal renders it impossible to give an approximate calculation of the quantity of land usually held by each small proprietor. The holdings, however, must be mostly of very limited extent, since the proportion of proprietors to the total cultivated surface of Portugal is such as to give only about $4\frac{1}{2}$ hectares (about 11 acres) of cultivated land as the share of each proprietor. Allowing for the large properties, which are the rule in Southern Portugal, and for the large and medium-sized estates, which occur more or less frequently in the other agricultural regions, it is obvious that there must be a very large number of proprietors whose portions of land will be extremely small. These properties are, perhaps, more usually intersected by others than held together.

(e). The duration of leases in Portugal is for the most part brief. The vast majority of them are in the nature of tenancies-at-will, from year to year. A five or six years' lease is in practice a long one; and leases of still longer duration are exceptional. It is easier to obtain a lease, for a term of years, of corn or pasture lands, than of vineyards, oliveyards, or orange-groves, since a dishonest tenant will have more temptation and greater facilities to exhaust the latter than the former during the period of his tenure.

(f). In case of ordinary tenancies for a limited term, rent is usually paid in money.

(g). (1). EMPHYTEUSE is thus defined by the Civil Code: The contract of emphyteuse arises wherever the owner of any real property (*prædium*) transfers the *dominium utile* of such property to another person, who binds himself to pay to the owner a certain fixed sum called a "foro," or "canon." The landlord, who thus retains for himself only the *dominium directum* of the land, is called the Directo Senhor or Senhorio; the tenant is called the emphyteuta, or more commonly the Foreiro.

(2). The Romans, it is well known, when they conquered a country, occasionally left the land in the possession of the inhabitants, and at other times divided it among settlers or the victorious soldiery. The occupiers, to whichever of these classes they belonged, paid an annual fixed rent to the Republic, called vectigal. Squatting was also permitted

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on some of the unreclaimed lands of the conquered country, the squatters being held to pay to the State a fixed proportion of the fruits of the soil and a varying quota of the live-stock. Another portion of the unreclaimed lands was reserved for the benefit of the State or of the municipalities. The decurions, who were charged with the administration of these lands, let them on leases, some of which were originally terminable, but which all tended to become perpetual. These leases did not, however, convey any portion of the ownership, and the tenants were liable to have their rents increased, to be evicted whenever the State alienated the dominion, and thus to lose the benefit of any improvement effected by them. Such risks tended naturally to prevent the tenant from ameliorating his holding, and hence to defeat the object of the lease.

(3). By degrees, therefore, the improvements made by the tenant were secured to him; he was guaranteed from increase of rent and from eviction, the alienation of the property by the State being held thenceforth to affect the quit-rent only¹; and finally, he obtained full power to dispose of the land, which nevertheless remained subject to the quit-rent, in whatever hands it might be. The tenant, thus, in fact acquired the *dominium utile* of the land. * *

(4). The Portuguese Code, bearing the name of Alfonso V, embraced a system of emphyteutic laws, and from this time forward emphyteuse became one of the leading tenures of Portugal, and was applied to cultivated as well as to waste lands, though more commonly to the latter. The monarch, the great feudal lords, the churches, the monasteries, were all glad to alienate, in this form, waste or other lands which they could neither sell nor cultivate; but, whereas the rents exacted by the Romans had been for the most part moderate, they became, under the new system, in many cases exorbitant, the large and wretched class of non-proprietors being forced to accept, in return for land, any terms which its owners might choose to impose upon them. The rent and other services thus exacted from the tenant became, and still were up to a recent date, so oppressive, that it was only with extreme difficulty that he was able, in many instances, to provide himself with the barest necessities of life. These "foros" were often not only exorbitant in amount, but most vexatious also in their variety and in the difficulty with which the means of paying them were procurable. Among the payments stipulated with frequency by the ancient contracts of this nature, were such things as a quantity of incense, a certain number of porringers, iron tools, shoes, and sea-fish, where the holding was perhaps in the interior of a country possessing no roads. * * *

(5). Sub-tenants were formerly permitted on property under emphyteusis. The Codigo Civil has abolished that permission. The perpetual tenant remains by right in occupation of his holding so long as he punctually pays to the proprietor the annual rent charge. The perpetual tenant can, with the consent of the proprietor, sell his interest in the land; the purchaser and proprietor remain in the exact position and relation to each other as existed between the former perpetual tenant and himself. The mutual consent of both is also requisite to enable the

¹ As when Government alienated the *khoodkasht ryots'* quit-rent in favour of the *zemindar*.

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proprietor to sell his interest in an estate. (Mr. W. Doria, 10th December 1869.)

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(6). Under emphyteusis the proprietor has no power to raise the rent, a provision in favour of the tenant introduced by the famous Marquis Pombal. On non-payment of rent the landlord can evict the perpetual tenant, whose right in the land is sold by auction. (Mr. W. Doria.)

17.—GREECE—*Reports dated October and November 1869.*

(a). Barely one-sixth or one-seventh of the whole superficies of the kingdom of Greece (excluding the Ionian Islands) is under cultivation, though half of the remaining portion is either susceptible of tillage, or could be rendered so by skill and labour.

(b). The lands owned by the State occupy nearly three-fourths of the whole extent of territory suitable for cultivation, and at different times it has been proposed to portion them out among the peasants.

(c). Out of a total of 5,600,000 acres of productive land, but 1,800,000 are said to be under cultivation. This is mainly to be attributed to the smallness of the agricultural population, which does not number above 600,000 or 700,000 divided into 150,000 families, each varying from four to five individuals. About one-third of those families is possessed of land, and, as far as can be ascertained, the proportion between the large and small proprietors may be assumed to be one of the former class to sixteen of the latter. The scarcity of population, the want of capital, and the superabundance of land, all combine to make it impossible for the large proprietors to find tenants in the English acceptation of the term. They are consequently compelled either to cultivate their properties for their own account with the assistance of hired labourers, or to enter into a kind of partnership with the peasants, from whom they receive a certain fixed share of the produce, which varies according to circumstances. The latter system known as the system of having collegas (colleagues or co-partners) is almost universally resorted to in the ancient provinces of the kingdom, with the exception of Euboea, Phthiotis, and Attica, where there are very extensive estates which can be more advantageously cultivated by the owners themselves.

(d). The Government lands are farmed on the collega plan, but the position of the peasants settled in them differs on one very essential point from that of the collegas on private properties; for whereas the latter can under no circumstances establish a legal claim to the portion of the land they cultivate, the former acquire absolute proprietary rights to any part of their holdings on which they may have made improvements of a permanent nature, such, for instance, as buildings or plantations.

(e). When the proprietors of arable lands furnish the seed and the oxen required for ploughing, one-tenth of the produce is first deducted to meet the taxes (the tithe amounts to 8 and the local imports to 2 per cent.), and they then receive from the tenants one-half of the remainder, besides the quantity they may have supplied as seed. When the proprietors merely provide the land, they receive, according to its quality,

from 10 to 20, and sometimes as much as 25 per cent. of the produce, after the amount due as taxes has been deducted. The average is, however, 15 per cent., which is the amount paid by tenants on all Government lands.

(f). In the total absence of competition for land, it is not the interest of landlords to change their tenants, and the rent is calculated on such a scale that any attempt to raise it would, in most cases, lead to the loss of the tenants. When Greece obtained its independence in 1829, the lands of the Turks became, with few exceptions, the property of the Greek Government; it also took the lands of those monasteries which were in ruins, or had only six months remaining, so that it obtained possession of about three-fourths of the whole of the country;—part of these lands were given away in small lots of the value of about £70 to some of those who had fought during the Revolution. The law directed that lands should be given to all the heads of families, but it appears not to have been faithfully carried out; part were sold, payable by instalments extending over ten years; part are still cultivated by the peasants, who pay from 12 to 15 per cent. of the produce to the Government, exclusive of the regular tithes, and consider the land they occupy as their own property; and part still belongs to the Government.

(g). The land is held, therefore, principally by the Government and small proprietors; probably more than one-half of the agricultural population are small proprietors. Tenants under proprietors are not numerous, and sub-tenants can hardly be considered as existing.

(h). It is difficult to state with anything like accuracy the quantity of land usually held by small proprietors; for it is well known to vary very much in different localities, and there is but scanty and often conflicting information to be obtained on the point, as on most others connected with the tenure of land in this country. At a rough calculation, small proprietors hold each, on an average, from 15 to 25 acres; while considerable numbers of peasants in different provinces possess from 40 to 50 acres, and in some exceptional cases even a larger amount. Many of the small proprietors in the islands do not own more than 1 or 2 acres.

18.—DENMARK—*Report by Mr. G. Strachey, 18th December 1869.*

I.—GENERAL DESCRIPTION OF TENURES.

(a). Danish estates of the old type bear an apparent likeness to the Manors of our Domesday Book. Whereas the Norman and (under other names) the Saxon manor was divided into (1) demesne, and (2) tenemental lands; the Danish "Sødegaard," or family seat, consists of (1) the "Hovedgaard," or demesne round the mansion; and (2) the "Bøndergods," or portion occupied by small farmers. Between the demesne, or tenemental land, the law has drawn a fast line, keeping the two species of property rigorously apart, by ascribing to each separate rights and obligations. The "Lord-drot," or lord of an unentailed estate, may sell or lease his demesne as he thinks fit. But his proprietary rights over the tenemental lands are so conditioned, as to give the occupants a kind of joint ownership in the surface of the soil. According to

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the Code, 1683, of Christian V, the Danish Justinian, a family seat, should lie near or amid tenemental farms, rated in all at 200 "Tonder" of "Hardcorn," say 2,000 acres. The "Sødegaard" had special fiscal immunities, and its owner was not bound by the regular law of bequest. The rule of area above given was not always observed, and it has been modified by later legislation. There may be 600 of these estates, which, however, are now rapidly dwindling in size, owing to the conversion of their tenemental farms into free-holds. But if their part in the kingdom's theoretical "Hardcorn" be diminished, their importance is, on other grounds, considerable; and a clear comprehension of their position in law is an essential preliminary to an understanding of Danish agrarian questions.

(b). A Sødegaard may be a free-hold in fee simple (I use this expression as the nearest English equivalent), or an estate in tail. If entailed, it may belong to the "Stamhuse" (1) or to the Fiefs (2). The Stamhuse (1) correspond in part with our own entailed estates. As the Danish law knows no "fine and recovery," the entail cannot be legally barred. But the Crown has in some cases allowed the conversion of such estates into money-trusts, and in others removed the entail. The lands, as well as any personal property tied up with them by the Fidei-commissary band, must descend in perpetuity as a family possession, to be enjoyed after the manner indicated by the founder's deed. The usufruct commonly follows the rule of primogeniture. The Fiefs (2), or estates of the Counts and Barons (thirty-two in number), have all been created since the establishment of the absolute government in 1660. They enjoy certain privileges, legal and other, and descend by primogeniture. On failure of the line, they revert to the Crown.

(c). The constitution of 1849 forbids the erection of fresh entails, and promises that entails of this class shall be converted into free property. No Bill has yet been passed in such a sense.

(d). I pass from the "Sødegaard" as a whole to the "Hovedgaard," (1), or demesne, with which the owner of an entailed estate may deal as he pleases. This part of the property formerly enjoyed considerable fiscal immunity, being said, in consequence, to be "free earth;" it is still, as a rule, exempt from tithe. The "Hovedgaard" is never split up into separate farms. When it is leased, the legal relations of landlord and tenant are entirely dependent on the contract. Neither side has any rights or obligations as regards the other, except such as derive from express agreement.

(e). Attached to the Hovedgaard are the Bøndergaard, or peasant farms. These farms may not exceed 120 acres, and must have a minimum area of from 10 to 15 acres. Every farm is necessarily kept apart from the demesne, and let to a separate tenant on a lease for his own life and that of his widow. This species of tenure is supposed to have been common in Denmark at the date of the issue of the Code of Christian V. (in 1683). That Code forbids the "jord-drot" to throw tenemental farms into the demesne, and the language of later laws is distinctly tantamount to the admission that the peasantry as a class (not generally of course, but collectively) have a claim to continue on the soil so long as they comply with certain conditions of tenure fixed, not by the landlord, but by the State. It is a matter of

dispute whether or not the "Fæstetvang," or obligation to lease on two lives, was a positive legal fact enforced by penalties, to the exclusion of other shapes of tenure, before the issue of an ordinance of the year 1790. However that may be, the existing law is so jealous of infringements of the "Fæste" principle, that when any "Bøndergaard" is converted into a freehold, twenty years must elapse from the time of its purchase before it may be let otherwise than on the two lives system, or on the fifty years' tenure named immediately below.

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(f). When the farm of a "Bonde" becomes vacant, the landlord must assign it to a new tenant within a year and fourteen days. The exceptions are—

(1). If no tenant offer a fair rent, and the landlord can establish the fact, he may, under severe restrictions, parcel out the vacant "gaard" amongst adjacent farms.

(2). The landlord may turn the farm into lots for labourers.

(3). Or into plantation, on condition of building two houses, and giving each a small piece of ground.

(4). Or absorb it into the demesne, on condition of giving up an equivalent of demesne in exchange.

(5). Or sell the farm, or convert it into a base freehold called "Arvefæste," which will be described hereafter.

(6). Or lease it for fifty years certain, and so doing he is not subject to the general rules of the "Fæste" system. This plan has been growing common of late, and to prevent its abuse, the government has just presented a precautionary Bill to the "Folkething."

On exception (5) I should remark that Danish legislation shows traces of a disposition to encourage the great landholders to sell the farms held on life tenures to their occupants.

(g). Land may also be held in "Arvefæste," or hereditary tenure, of which relation there are two species: (1) "Arvefæste" simple, where the lease is to the tenant and his heirs for ever, in return for a quit-rent, the estate escheating to the owner on failure of tenant's heirs; (2) "Arvefæste" with right to sell and mortgage. This tenure seems to be like that of the so-called "tenant-right" estates of our border country. The landlord is a perpetual rent-charger, receiving an annual payment of grain, and a certain relief whenever the ground passes to a new owner. The second of those kinds of tenures is very common. In Danish discussions it is always assumed to be equivalent to fee-simple, a fact which should be borne in mind. "Arvefæste" of the second species seems to me to resemble the Roman Emphyteusis, but the Danish Emphyteuta has absolute power to alienate. The Danish system may also be compared with Sir Arthur Chichester's settlement of Ulster.

(h). No estate, large or small, can be parcelled without permission from the Minister of the Interior. The strict rule is, that when a "gaard" is broken up, there must be reserved one lot of at least 25 acres of first class land. Farms of less than 25 acres may not be sub-divided, except under very special circumstances: one lot of 10 to 12 acres must always be reserved. When demesne is sub-divided, there must be told off for separate sale or occupation as many lots of 80 acres as the feudal owner owned knight-horses for military service. For building,

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lots of 2 acres may be detached from an estate, and any lot, however small, may be cut from a farm when the intention is to cede it to the owner of a contiguous property, or to annex it to a house which has no land. Before a motion for the so-called "Udstykning" can be lodged at all, a number of formalities have to be gone through, amongst which I may notice the preparation of a map of the ground to show the exact nature of the division proposed. This is insisted on as a precaution against the parcelling being done in strips, and to ensure a division into squares or other suitable shapes of ground.

(2). It should be unnecessary to remark that these rules do not bear on the life-leasehold farm. Neither do they apply to the "Housemen" or occupiers of small plots, which are too small to be ranked as a "Böndergaard."

II.—LARGE AND SMALL PROPERTIES.

(a). The advocates of production on a grand scale may derive many arguments for their views from the case of Denmark. Except in a very few special instances, none but the large manors inspire comparisons with inferior farms elsewhere. On these alone is the business of agriculture transacted with adequate means, intelligence, and zeal. The superficial observation of travellers has sometimes fancied likenesses between Denmark and England. But the circumstances and aspect of the two countries, their social and intellectual characters, are, in truth, utterly dissimilar. Danish types of things and persons differ *toto calo* from English types, so that the same scale will not measure both; it is only in a loose way that a Danish manor can be compared with a first rate English farm. There are 1,750 manorial farms and "Avlsgaarde"¹ which, however, only make up one-eighth of the kingdom's hard corn. Their average size is 370 acres; 500 of them have an average area of 400 acres each, the farms on the islands being larger than those of Jutland. The "Hovedgaard" is always farmed as a whole. The cultivator is either the owner or a gentleman farmer belonging to the upper classes of society. The lease is usually for as many years as the land is divided into marks, the average numbers being, say nine or twelve; for seven marks, the lease, however, would be for fourteen years. All the relations of landlord and tenant are governed by the lease, which is always minutely particular as to the manner of cultivation, terms of payment, &c. The sub-letting of any part of the leased land entails forfeiture of the lease, sub-letting not being legal, unless by agreement; good manorial land is rented at from 18s. to 1*l.* 5s. an acre—the selling value would be, per acre, from 23*l.* to 35*l.* A net profit of 3 per cent. would be thought handsome, but few amateurs could reach that figure.

(b). Important though the manor be as an influence and example, the "Böndergaard" is the characteristic farm of the country. The peasants' farms, freehold or leasehold, may be compared for area with the farms of the west coast of England, their average size being 60 to 70 acres. There are 70,000 of them, of which nine-tenths are of the new freehold category, the whole making up three-fourths of the kingdom's "hard-

¹ Estates which derive from Sødgaard.

corn." One Danish "Böndergaard," or peasant's farm, is, as I imagine, very like another, be the tenure leasehold or freehold.

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(c). It has been explained in the first chapter that the law of Denmark withholds the name and quality of "Bonde," or peasant, from all proprietors or occupiers of land whose holdings are of less than about 10 acres; that in practice it is hard to trace the frontier line between the "Bonde" and the "Huusmand," who is the tenant or owner of a house with or without land attached. There may be 137,000 of these housemen, of whom nearly one-half have, on an average, 4 or 5 acres of land, one-quarter lots of less than an acre, the rest having mere fractions of soil, or none at all. The holdings are often less important than they look on paper, for some of them, especially in Jutland, may be uncultivated ground. At the top of the stratum of housemen are a few who, being employed in fishing, or otherwise driving an accessory business as carpenters, coopers, blacksmiths, &c., approach the position of a "Bonde" of the poorer sort. But the "Huusmand" is, on the whole, if a freeholder, the equivalent of the ordinary Prussian peasant, if a leaseholder, the equivalent, in spite of his land, of the English day-labourer. He can very seldom subsist on the produce of his holding, and has to work for hire, 25 acres being, I imagine, the minimum of land here sufficient to support a family. Two-thirds of the housemen are freeholders, the rest being tenants on two lives or at will. The freeholders are rather more prosperous than the leaseholder.

III.—MR. SAMUEL LAING'S ACCOUNT (1852).

There are large estates and small; all over the country, estates of noblemen and gentlemen and estates of peasant proprietors. The greater part of the land is in the hands of the latter class. They are increasing, not by dividing and sub-dividing their land among their children, which seems to be a social characteristic of the Celtic race, and peculiar to the peasantry of France and Ireland, but by clubbing together, and buying and dividing noblemen's estates or crown lands which happen to come into the market. As a class, they are wealthy, and such combined purchases and divisions of land are common. The land is well divided for the capital and industry of the country. The great *verpachter*, with his skill and capital, and the working husbandman with his own labour and his family's, and his little working and milking stock, can find farms to suit them. I have seen none so small as to be cultivated without horses, by spade labour only. In all northern climates on the continent, as stated before, the short interval of time between winter and spring, between the frozen, impenetrable state of the soil, and the season for sowing, prevents the division of land into portions too small to maintain horses becoming prevalent. Spade-husbandry could not overtake the seed-time, and frost and snow are natural preventive checks upon too minute a division of the land. The number of estates in Denmark proper of an extent to be manors, and having manorial rights, and belonging principally to the nobility and gentry, is not above 800, and of freehold estates of smaller size, belonging generally to peasant proprietors, the number is about 63,700, not including houses with gardens only, and without farm land. There are, besides, about

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10,000 copyholders, that is, holding land on leases, transferable by sale, mortgage, or inheritance, and about 56,300 leaseholders holding land on life-rent or on long leases, but with no right of alienation.

19.—SWEDEN—*Report by Mr. A. Gosling, dated 22nd February 1879.*

I. Population on 31st December 1868, 4,173,080. Industrial pursuits are agriculture, mining, navigation, fishing, and manufacturing employments of every description.

II.—LAND OCCUPATION.

(a). The greater part of Swedish soil is the property of peasants who cultivate it themselves, and consequently the land is, for the most part, divided into small properties. There are, relatively, few large properties in the possession of individuals. The private landed property in Sweden is divided among about 29,000 land owners.

(b). The large majority of land owners cultivate their own land. As a rule, it is only in connection with large properties that land is leased.

(c). The entire country contains 66,438 "mantal" or assessed unities. If this sum be divided among the before-named number of proprietors, an average is obtained of less than a quarter of a "mantal" for each property. Each "mantal" on the average is divided into four properties, ranging between $1\frac{7}{10}$ in the governmental district of Stockholm, and $11\frac{1}{2}$ in the governmental district of Wermland.

(d). The average quantity of land contained in a "mantal," calculating from the entire area of the kingdom, is about 1,220 "tunnland" or 1,488 English acres ("tunnland" = 121,986 English acres). The average, however, varies considerably when taken in separate "lans" or governmental districts, in consequence of different degrees of cultivation and fertility, being as low as 225 "tunnland" (274 English acres) in the district of Malmohus, and 26,000 tunnland (31,716 acres) in the district of Norbotten.

(e). Entailed estates exist in Sweden, but no new entails can be formed.

(f). (1). The total area of tillage land is about 6,460,000 acres; that of natural grass land about 5,360,000 acres. The total area of land in the whole kingdom, including islands, is estimated at about 112,380,000 acres. Machinery is, relatively, very little used; but it is gaining ground on the larger estates.

(2). A very large proportion of the land being the property of peasants, worked by them and their families, considerably reduces the necessity for hired labour. This, however, is increasingly required in connection with an improved system of farming.

(3). There are about 310,000 hired farmers and garden labourers (paid either in wages or by holdings and in kind). Of these, 141,000, or about five-elevenths, are females. In addition to regular farm labourers, there are about 100,000 "torpare," who hold cottages and small plots of land for which their families and beasts of burthen are bound to render a certain number of days' work annually.

(4). If these 310,000 hired and other labourers and the 100,000 torpare are divided among the total area of tillage land in the kingdom, viz.,

6,460,000 acres, it will give a proportion of about one labourer to every 15 or 16 acres. It must, however, be borne in mind that there are nearly 200,000 proprietary peasant farmers, and about 40,000 tenant farmers who (in most instances with their wives and families) are regularly engaged in farm labour.

(g). As before stated, tenancies and sub-tenancies are not numerous, on account of the very large proportion of the land being in the possession of peasant farmers, and it being the rule even for the owners of large estates to cultivate their lands themselves. In those cases in which tenancies exist, they usually consist of entire estates, or of parts of large estates which have originally been separate properties. The average quantity of land held by each tenant is consequently about the same as the quantity held by each proprietor, *viz.*, somewhat less than a quarter of a "mantal," or about 385 acres, varying, according to the character of the soil, from about 60 acres in the government district of Malmöhus to about 5,000 acres in the government district of Norbotten. The above average includes forest and waste lands. The average quantity of tilled land held by each tenant farmer is about 22 acres, and of natural meadow land about 18 acres.

(h). The tenure is by lease for a certain term of years (but not exceeding fifty), or during the natural life of the tenant and his wife. Sub-tenancies are prohibited. This prohibition does not apply to sub-farms subordinate to the principal property leased by the tenant. The rent of such sub-farms, however, may not be raised above the sum determined by previous tenants of the principal property. This, notwithstanding the tenant of the principal property, is often permitted by his lease to let sub-farms to new tenants, as vacancies occur, on such terms as he may be able to obtain.

(i). Tenancies may be created both by parol and written agreements. When no certain term is prescribed for the duration of tenures, the term is presumed to be one year. Tenants of small farms, however, are generally allowed to retain their tenures as long as they live, and are usually succeeded by their sons or sons-in-law.

(k). Rent is paid according to the nature of the agreement—in money, kind, and labour. Rent is determined by agreement alone. If determined in money or kind, it is paid once a year. Payment of rent by a share of the produce is rare.

(l). The relations between tenants and proprietors are generally friendly; between small tenants and large proprietors they have hitherto been patriarchal. Of late, however, signs of discontent have been manifested by some of the smaller tenantry, which, before long, will probably call for various amendments in the existing laws.

III.—MR. SAMUEL LAING'S ACCOUNT (1839).

(a). The whole arable land of Sweden is divided into 65,596 hemmans; but the word hemman signifies merely an estate—a homestead,—and gives no idea of the extent or value of the land. There are hemmans in the same parish almost twenty-five times larger and more valuable than others. It is a fiscal division only, for the purpose of levying the land-tax upon different classes of estates according to ancient assessments.

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(b). Taxation in early times was personal; or, at least, partly on the supposed ability or other circumstances of the possessor of the land, and partly on the value. The first great step towards free institutions and civil rights in Europe was converting personal taxation into territorial, or taxation upon value and extent of property; and countries are free at present, in proportion to their approximation to this first principle in civil rights, that property only is a subject for assessment. Domesdaybook, which some of our historians consider as a tyrannical valuation of the country by the Conqueror for the purpose of oppressively taxing his Saxon subjects, was, in reality, a wonderfully perfect and enlightened step for that age to equalise all assessments and services or payments to the State according to value, and from which all our subsequent progress in free institutions must be dated.

(c). The principle of personal or mixed taxation runs through the whole Swedish system, and is the main cause why the husbandry of the country can never improve, nor the people ever be free. A whole hemman of land is considered to be such a portion of arable ground as would let for 40 silver dollars, or about £9, and pays taxes and local burdens accordingly. But the old hemmans cannot be revalued, for the whole class of nobility and of peasantry would oppose in the Diet a re-valuation which would throw additional burden upon their old lands.

(d). New land taken into cultivation is consequently much more heavily burdened than the old and better land. In every country the best quality of land is the first taken into cultivation. A hemman of such land is necessarily of far better quality, and from the inferior value of agricultural produce in the early age when it was rated as a hemman, of far greater extent than land subsequently taken into cultivation.

20.—NORWAY—*Mr. Samuel Laing (1836).*

(a). In Norway the land, as already observed, is parcelled out into small estates, affording a comfortable subsistence, and in a moderate degree the elegancies of civilised life; but nothing more. With a population of 910,000 inhabitants, about the year 1819, there were 41,656 estates, or 1 to every 22 of the population. * *

(b). Land in Norway will give a comfortable living to the owner, but will do no more. No investment beyond what a man occupies and uses for his family would be profitable, because where almost all are proprietors, tenants are scarce; and from the standard of living being high, and formed upon a state of society in which almost all are proprietors of the farms they cultivate, and are living fully upon the produce, a respectable tenant would live as well as other people of his class, that is, as well as the landlord himself. It would be only a small surplus that, after taking out of the produce his own living and that of his servants, he would have to pay yearly as rent.

(c). It is usual, therefore, when a person happens to have more than his own family farm, to *byggesel* the land; that is, to let it at a trifling or nominal yearly rent for the life of the tenant and of his wife, the man and wife being always joined in these leases, and to take a fine or

grassum when it is granted or renewed. That quantity of land which supplies a family with farm produce, and requires no great skill, activity, or capital to manage, is all that is wanted by any individual. There is consequently little demand for land, while family arrangements among heirs often fill the market without any demand.

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21.—RUSSIA PROPER—*Report by Mr. Mitchell January 1870.*

I. (a). Population, 59,097,859 of both sexes. In thirteen of the central provinces of Russia, where the soil is less favourable to the development of husbandry, the population is very extensively engaged in industrial pursuits. The manufactories spread over the country, but found mostly in the provinces of Wladimir, Moscow, St. Petersburg, and Jaroslav, give employment to about 358,000 workmen. Nearly all the villages in the latter provinces are interested more or less directly in the development of manufacturing industry. Thousands of hands are employed in the villages of Wladimir in spinning and weaving cotton, while entire village communities devote themselves to some particular branch of industry. Some villages produce hardware, others cutlery; wooden boxes will be made in one commune, boots and shoes in another.

(b). But apart from these well-established industries, which render the pursuit of agriculture in these districts of secondary importance, it may be said that, except in the Black Soil country, (two-thirds of the agricultural population), the peasant in Russia is at the same time more or less a mechanic, a manufacturer, a trader, and a labourer for hire. The long months of winter, during which all agricultural operations are in suspense, favour the development of the industrial and commercial instincts of the Russian people. They have also to a considerable extent been developed by serfdom, under which the peasant attached to an unproductive soil was driven into other pursuits by the necessity of paying his quit-rent. The tendency of the Russian peasant to seek industrial occupation after the termination of his field labours, has been promoted by increased taxation, consequent principally on the system of land taxation. The carriage of goods by the rivers and highways likewise continues to give employment to a considerable portion of the peasant population in summer and in winter. In the former case the peasant returns in time to reap his harvest. In the purely agricultural provinces the peasants make their own implements, and the women clothe their families with the wool and flax which they weave and spin. But their cottages are for the most part constructed by carpenters, who come from villages on the Volga.

II.—LAND OCCUPATION.

(a). Notwithstanding the Emancipation Act of 1861, one-third of the cultivable land in Russia Proper is still held by the State, one-fifth by landed proprietors, one-fifth by the peasantry, and the remainder under a variety of forms by colonists, churches, &c.

(b). Prior to the emancipation, the landed proprietors had possession of 300,872,308 English acres, of which one-third (or 100,000,000 acres) was in the occupation of their serfs. The Emancipation Act raised

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to about 239,000,000 acres the quantity of land in the actual possession of the nobility or gentry, and reduced to a little over 60,000,000 acres the area of land which the serfs formerly held at a quit-rent or in return for service, but of which the emancipated peasantry were bound by law to become proprietors in free-hold, or tenants at a rent fixed by law.

(c). While the landed nobility and gentry and the merchants who have purchased lands since 1861 form a class of landholders numbering a little over 100,000 (exclusive of their families), and holding one-fifth of the total area of land capable of being cultivated in Russia Proper, the peasantry of Russia, numbering about 48,000,000 of both sexes, and formerly known as serfs, crown peasants, and appanage peasants, now occupy, under a variety of denominations and forms of tenure, another fifth of the area of cultivable lands.

SMALL PROPRIETORS—

(d). The peasantry of Russia may be divided into three principal groups in respect to the mode in which they have acquired possession of land—

1. *Peasants on land not mortgaged to the State.*—This group includes about 600,000 of the ex-serfs who have accepted the gift of a minimum allotment of land from their former lords, in lieu of purchasing with the aid of Government, or of holding at a fixed rental, the lands to which they were entitled under the Emancipation Act. Also small numbers of proprietors who acquired their farms in five other ways.

2. *Peasants on lands mortgaged to the State.*—This class is composed of two-thirds of the total number of ex-serfs, and of all the peasantry of the appanages (of the Imperial Family) who, either at the instance of their former lords, at their own desire, or by legislative compulsion (as in the case of the appanage peasants), have contracted a debt with the State for the purpose of purchasing the lands allotted to them under the Act of emancipation. It is, however, only in the southern, south-western, and north-western provinces of Russia, where the commercial system does not exist, that this class of peasants can, from an English point of view, be considered landed proprietors. In the rest of Russia, particularly in the thirty-three provinces of Great Russia, the proprietary rights in lands allotted to the peasantry are vested in the communes, of which the peasantry may, therefore, theoretically be considered only tenants. At the same time they enjoy the perpetual, hereditary, and individual usufruct of their homestead.

3. *Peasants settled on crown lands.*—These, whether under the communal system or otherwise occupying crown lands, and hitherto known as "crown peasants," are now known as peasant proprietors. "Their number is 23 millions of both sexes. * * The redemption scheme does not apply to this peasantry, and the crown is not considered a mortgagee of their lands. The state demands the payment of a yearly rental ("obrok"), and makes the alienation or transfer of land by the peasantry conditional on the purchase money (which is fixed by the capitalisation of the rental 5 per cent.) being paid into the exchequer of

crown domains. The proprietary rights of this peasantry would further seem limited by the fact that the rents, the capitalisation of which at 5 per cent. represents the price of the land, are fixed only for twenty years, after which they will be raised. The legislature has bestowed the title of proprietors on the peasantry, and their lands can in no case revert to the Crown.

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Russia.

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(f).—TENANTS.

The forms of tenancy may be classified as (1) tenancy under Legislative Acts, (2) tenancy by mutual agreement.

(g).—*Tenancy under Legislative Acts.*

Under this head may be placed theoretically—

(1). The great bulk of the peasantry of Russia Proper, whose communes have accepted the aid of Government in the redemption of their lands, and who have not purchased from those communes their individual proprietary rights.

(2). All the communes of ex-serfs which continue to hold their allotments and homesteads at a rental fixed by the legislature, and paid either in money or service. This class of tenancy exists only in the thirty-three provinces of Great Russia, and still includes about 3,000,000 of males, or one-third of the total number of ex-serfs.

(3). The ex-crown peasants who continue to hold under communes that have not paid off the capital of the rent with which the land is burdened, and the payment of which in one sum converts the tenancy into freehold proprietorship.

(h).—*Tenancy by mutual agreement.*

Notwithstanding the allotment of land to the peasantry, the leasing of lands from landed proprietors and from the Crown has become very general, particularly in the purely agricultural districts. A very large proportion of the estates of the landed nobility or gentry and large tracts of Crown lands are thus held by the peasantry at a rental fixed by mutual written agreement, frequently for periods of three, six, nine, and twelve years, but as a rule for the term of one year. It is only in exceptional cases that these lands are leased for the purpose of being built on. The peasants having their own homesteads require these additional lands only for cultivation.

(i). (1). The quantity of land left in the actual possession of the former privileged class of landed proprietors, gives an average of 673 dessiatinas (1,925 acres) to each proprietor, and that of which their ex-serfs are now either perpetual usufructuaries (proprietors) or perpetual tenants is about $3\frac{1}{2}$ dessiatinas (10 acres) per male. The ex-serfs of the appanages have, however, retained an average allotment of $5\frac{2}{3}$ dessiatinas ($15\frac{1}{3}$ acres), and the crown peasants 7 dessiatinas, or 20 acres.

(2). Where the communal system exists, the peasant allotments are necessarily very much intersected—a disadvantage that arises principally from the three-field system of cultivation, under which a peasant obtains a small parcel of land near his own homestead and another at a considerable distance, each householder receiving his share of the nearest

APP. and best, as well as of the farthest and worst, lands held by the
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(k). The peasant allotments are in process of being purchased with the aid of Government to the extent of four-fifths of the value placed upon them by the Emancipation Act. Until the general mortgage (now amounting to 487,174,281 roubles, or £64,956,570) is paid off, the peasantry will be unable to raise any further loans on the legal security of immoveable property.

(l). While assisting the peasantry, the Imperial Government has at the same time foreclosed the mortgages which it held on the lands of the nobility or gentry to the extent of £53,000,000.

22. It appears from this account that middlemen, or farmers of rents, the curse of Bengal, do not exist in the United States and in the several countries of Europe, except in Sillesia, where they are employed in collecting rents from small holdings near towns, which are cultivated by inhabitants of the towns, whose auxiliary earnings from other industries enable them to resist undue exaction. With this exception, and some others in Portugal and Italy, the land in the countries on the continent of Europe, which have been passed in review, and in the United States, is held by proprietors, great and small. The great proprietors do, indeed, imply the existence of a class of tenant farmers, and of a large class of agricultural labourers. The tenant farmers, however, on these great estates, are men of capital, between whom and the Bengal ryots there is not the least resemblance; the agricultural labourers on the same estates are not wholly dependent on their wages as labourers; each of them has a cottage and a small holding which he cultivates as proprietor, or, in Southern Europe, on the metayer system. Italy and Portugal bear striking testimony to the value of peasant proprietorship, in that ungenial soils are held in such proprietorship:—"an owner alone would give the loving labour requisite to render the rocky mountain slopes productive." The United States and the military States of France and Germany are countries of peasant proprietors; Russia has added to her military strength by the liberation of her serfs; and while her Empire has the important advantage over other European countries that it contains room for her population to expand to treble its present amount, without overcrowding, her means of such expansion are through migrating or colonising communities of peasant proprietors,—thus foreshadowing a danger to the liberties of Europe, which only the multiplication of peasant proprietors in England and elsewhere can avert. Austria, the weakest of the military monarchies, has a preponderance of great proprietors.

APPENDIX XXIV.

CONDITION OF AGRICULTURAL CLASSES IN EUROPE.

1. The condition of the agricultural classes, proprietors, tenants, and labourers, as affected by the land tenures in Europe, is indicated in the following extracts from the sources quoted in the preceding Appendix :—

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—
PORTUGAL.

I.—PORTUGAL.

(a). In the ten years from 1852 to 1861, both inclusive, the registered debt owing by the land in Portugal on mortgage amounted to £7,850,000 in round numbers; of this sum, about one-fifth only had been lent by the religious corporations, who charged a fixed interest of 5 per cent. The remaining four-fifths were loans from private persons; and in the majority of cases it is certain the rate of interest was extremely usurious, averaging from 10 to 15 per cent., and even higher.

The rate of interest charged by the Land and Credit Company cannot exceed 6 per cent.

(b). The standard of living and general circumstances of the rural population at large are thus described by M. Rebello de Silva :—
“The rural populations of Portugal are for the most part far from robust, and in many localities they are ailing, weak, and apathetic. The want of sufficient nutriment, and the marshy miasmas to which they are exposed, contribute to the gradual degeneration which they exhibit. Their vigour and growth are stunted by the large quantities of vegetable food which they are compelled to consume in order to obtain the quantum of nitrogenous substance essential to life. Pot-herbs, a little rice, chestnuts, and scanty rations of fish, constitute, with vegetables, the main sustenance of our rural classes. Beef, mutton, goat's flesh, and pork, are never eaten by them, except perhaps on a few holidays in the course of the year. The people live and labour, or it may be more correctly said that in many parts of the country they only vegetate, and are too weak and too little energetic for the physical efforts demanded of them.” Gloomy as this picture is, I fear it is but little exaggerated, and its main details are certainly more applicable to the class of very small proprietors than to the hired labourers, who in the Alemtejo at least, obtain, besides their wages, a scale of rations into which meat enters to a considerable extent. * *

(c). In Portugal the landlord and tenant regard and treat each other almost as if they were declared enemies. The contract which binds them together is tacitly adjusted to the prejudice of both, for the landlord thinks that his sole interest lies in the elevation of the rent; while the tenant, careless of the ills arising from the exhaustion of the soil, wrings from it the maximum produce with a view to satiating his own greed, and the still insane avarice of the landlord.

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Para. 1, contd.

(d). As regards cultivation of their farms and general independence of character, they are, as might be expected, inferior to the small proprietors; as regards employment of labour, mode and standard of living, and, perhaps, solvency, they are superior.

(e). In the present day, metayage reigns only where the poverty of the rural classes is greatest and most extensive. Impotent, as a rule, to stimulate the improvement of the soil, it is almost always accompanied by agricultural backwardness, and not seldom followed by immorality. The metayer is frequently guilty of fraud in the division of the produce, a circumstance which forces the landlord to continuous vigilance, which in the end becomes oppressive and vexatious. * *

(f). The standard of living and comfort among the rural classes has been already described in general terms, and is such as under the less genial sky of Ireland would be almost too low to support a bare existence. * *

(g). The system of taxes is evaded systematically by the rich, and presses with frightful severity on the poor.

We trace here a strong resemblance between the small proprietors in Portugal, burdened with frightfully severe taxes, and Bengal ryots burdened with continually increasing rents.

II.—ITALY.

(a).—*Small Proprietors.*

Except in the Calabrias, they are tolerably well housed, fed, and clad; live on wheat or maize, bread, salt-fish, vegetables, pasta (macaroni, &c.), and fruit; fresh meat once or twice a week. They are coarse and rude in their manners and habits, are looked upon as small gentlemen. In the Calabrias they are reported as being much worse off. Mr. Albaru, Vice-Consul at Cotrone, in his report states: "In truth, it may be said, they are badly lodged, fed, and clothed. The small gains which they derive from the very small properties are barely sufficient for common necessities, having furthermore to apply these gains, before everything else, to the payment of the numerous Government imposts, which they barely suffice to do. The class in question, for their own actual subsistence, is obliged to contract debts, which in a short space of time absorb the whole of their little properties, and we see these small proprietors fall into distress and disappear."

(b).—*Tenants.*

The mode of cultivation by tenants on small holdings differs in no respect from that of small proprietors; their mode and standard of living is inferior to that of small proprietors. They live very frugally; eat fresh meat probably twice a year, Christmas and Easter. Their existence depends on their characters; if bad, no one will give them a farm. Their social position is inferior to that of small proprietors, but in probity and good faith they are said to be superior. As respects tenants holding large farms, they are a different class, usually possessing some amount of landed property of their own, but are a rough set, and often uneducated.

III.—NETHERLANDS—*Report by Mr. Laycock, 20th December 1869.*(a).—*Small or farming proprietors.*APP.
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NETHERLANDS.

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After what I have said of the average size of Dutch farms (50 to 100 or 125 acres), it is almost unnecessary to state that there is nothing, either in the way the occupiers of these farms are housed, clothed, and fed, or in their general circumstances, which calls for much commiseration; perhaps there is but little which suggests improvements. A succession of bad harvests, a blight, or a murrain, may indeed occasionally be the cause of extensive losses amongst these more than peasant-proprietors, but is seldom that of real suffering. By drawing on their own pecuniary resources put by for the dowry of a daughter, or the portion of a younger son, by cheerful self-denial and careful husbandry, they sooner or later succeed in making up for their losses and going ahead again. The cattle-plague was a source of untold loss to the pastoral population of Holland; whole herds were swept off by its malignant agency, and yet the empty meadows have already been re-tenanted, and Holland is as rich in cattle as she was before the scourge first appeared.

(b).—*Tenants.*

With regard to the manner in which tenant-farmers cultivate their farms and employ labour, and with respect to their standard of living, solvency, independence, and general circumstances and character, I cannot learn that they fall far below the average of proprietor-farmers. They are, of course, a less wealthy class, inasmuch as neither the land which they occupy, nor, in general, the buildings which they use, or the house in which they reside, belong to them; but this does not prevent the observations on proprietor-farmers in the earlier part of this report from applying equally to them.

(c).—*M. de Laveleye.*

(1). The farmers of Holland lead a comfortable, well-to-do, and cheerful life. They are well housed and excellently clothed. They have chinaware and plate on their sideboards, tons of gold at their notaries, public securities in their safes, and in their stables excellent horses. Their wives were bedecked with splendid corals and gold. They do not work themselves to death. On the ice in winter, at the kermesses in summer, they enjoy themselves with the zest of men whose minds are free from care.

(2). The Belgian farmer, we have shown, is neither as rich as his Dutch neighbour, nor can he enjoy himself in the same way.

(3). One reason is that in Holland the townspeople have at all times invested their savings in public securities, and generally left landed property alone, which has thus remained entirely in the hands of the peasants. In Belgium, on the contrary, the nobility have retained large landed property, and capitalists have eagerly bought estates. Hence a good number of the peasants have become mere tenants.

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BELGIUM.

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IV.—BELGIUM—*Report by Mr. Wyndham, December 1869.*

(a). I had some conversation here with a gentleman farming about 100 hectares of his own land. He expressed to me an opinion that the small owner is in very many instances less intelligent and less hardworking than, and in an inferior condition to, the small tenant. The passion for buying land, he said, was so great in Belgium, that ruinous prices were paid for it, which left to the purchaser little or no capital to lay out upon his purchase, which brought him in $1\frac{1}{2}$ per cent. or 2 per cent. at the most for his outlay.

(b). A hectare of land sold in small allotments, he stated, would fetch in the market—so great was the competition for land—as much as 15,000 francs; whereas a piece of land, 10 hectares in extent, sold in one lot, would not fetch more than 10,000 francs. Mortgages on small properties, he said, were rare, although sometimes a purchaser would pay for two-thirds of his purchase in ready money, and mortgage the rest for a short term. Land at a distance from villages and towns was not, he stated, so much divided; properties were much scattered, and tenants had great difficulty in hiring land lying together, a source of very great inconvenience.

(c). Small holdings produced higher rents than large farms; it was consequently in the interest of landowners to let their properties in very small farms, say of 1 hectare each, rather than in parcels of 50 or 100 hectares. He further remarked that Belgium formerly was cited as an example for agriculture, but that to-day she was retrograding.

(d). Properties being in general very much sub-divided, it frequently happens that the owners of land do not live on their own properties, but inhabit towns or villages adjacent thereto.

(e). The position of the agricultural labourer in Belgium, judging from the average rate of wages paid throughout the country, does not appear a favourable one; but it must be remembered that the number of persons so employed is relatively limited in this country, in consequence of the considerable number of small proprietors who farm their own land, and whose families, besides those of the tenant-farmers, are generally employed in agricultural pursuits.

(f).—*M. de Laveleye.*

(1). How is it that the Swiss peasant is much more substantial than the Flemish? Because the former is nearly always an owner of the soil, while the latter is but too often only an occupier.

(2). If the cultivator of the land is the owner of it at the same time, his condition is a happy one, in Belgium as everywhere else, unless the plot he holds is insufficient to support him, in which case he has to eke out his existence by becoming also a tenant or labourer. But as a rule, the peasant-proprietor is well off. In the first place, he may consume the entire produce of his land, which being very large, especially in Flanders, his essential wants are amply satisfied; secondly, he is independent; having no apprehensions for the future, he need not fear being ejected from his farm, or having to pay more, in proportion as he improves the land by his labour. Yet the mode of living of the little land-owner, who

works as a peasant, differs very little from that of the tenant-farmer. His food is about the same, except that he eats bacon more frequently, killing a pig or two for his own use, and that he drinks more beer. His clothes, habits, and dwelling also resemble those of the other class, save that they denote rather easier circumstances. He lays money by to purchase land and give his farm a better outline; and it is owing to the competition of peasant-proprietors in the land-market that the value of real property is rising so rapidly. * *

(3). The situation of the small Flemish tenant-farmers is, it must be owned, rather a sad one. Owing to the shortness of their leases, they are incessantly exposed to having their rents raised, or their farms taken from them. Enjoying no security as to the future, they live in perpetual anxiety. So much does this fear of having their rents raised tell upon their minds, that they are afraid to answer any question about farming, fancying that an increase of rent would be the inevitable consequence. Rack-rents leave the small farmer barely enough to subsist on. I do not think his working capital returns 3 per cent., and he works himself like a labourer. However, he is always properly clothed, and on Sundays he dresses just like a *bourgeois*. His wife and daughters, who work barefooted during the week, are stylishly dressed on Sunday, wearing crinolines, ornaments, and flowers in their hair. * *

(4). In my work on the rural economy of Belgium I made some reflections on the indifferent condition of the Flemish peasants, from which inferences adverse to peasant proprietorship have been drawn. These conclusions are erroneous. The evil arises from the fact that there are too few small proprietors and too many small tenants among the peasantry of Flanders.

(g). -FLEMISH PEASANT PROPRIETORS AND BENGAL RYOTS. (*Mr. G. A. Grattan.*)

The Belgian rural population, especially in the Flemish provinces, appear to combine the leading qualifications requisite to success in the cultivation of small properties. They are steady, sober, and persevering, prudent and economical in their habits, and are possessed of all necessary experience in whatever relates to the management of land. They are, moreover, extremely attached to the soil on which they were born and brought up, and are especially devoted to agricultural life; and it is these qualities which have enabled them to attain great success, and a considerable degree of prosperity as small cultivators, in spite of natural disadvantages in respect of soil, except in specially favoured localities which it has required the continuous industry of many generations to overcome. Other populations might not be qualified to encounter similar obstacles with equal success.

The Bengal ryots, with all the good qualities of the prosperous small proprietors in Belgium, have all the disadvantages of the small Flemish tenant-farmers with short leases, and rents constantly raised, or holdings taken away.

V.—FRANCE—*Report by Mr. West, November 1869.*

(a). There is no very recent information respecting the amount to which rural property is mortgaged in France; but I find it is estimated

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that there is an annual average charge upon it of £6,000,000, or 10 per cent. on its net revenue, calculating the usual rate of interest at 6 per cent.

(b). It will be found, as a general rule, that the small proprietor accommodates himself to the circumstances of the locality which he inhabits, and that his standard of living is generally such as to show that he is, if not always contented, at least comfortable.

(c). It must be borne in mind that the "tenant holdings," properly speaking, bear a small proportion to other tenures, and that the tenant farmer, as before said, is oftentimes himself a proprietor. The mode of cultivation, standard of living, and employment of labour, therefore, will not be found to differ much as a general rule. The tenant farmer may be said to possess this advantage over the small proprietor (but this is by no means always the case), *namely*, that he is assisted by the capital of his landlord if he is an intelligent and enterprising man.

(d). What is termed the hired labourer in England corresponds in France to the "*valet de ferme*," or farm servant. They live under the same roof, and eat with the master, and, in fact, form part of his family. They are, however, comparatively few in number. Their wages now average from £10 to £12 a year for men, and from £5 to £7 for women, lodged and fed at a cost of about £10 a year per head. The day-labourer ("*journalier*") receives from 1s. to 2s. per day, and women from 6d. to 1s. They are fed at a cost of about 8d. a head per day. Female labour is much employed, more especially in the Northern Departments, and this would seem to be a natural consequence of small holdings. On an average, the wages of the female labourer are one-half those of the male. It is quite impossible to state the average number of labourers to an acre, but it is quite certain that agricultural labour is generally deficient throughout France. The migration of the country population to the great towns is daily increasing. This deficiency, and the vast municipal improvements undertaken of late years, have produced a rise of wages in the towns which attracts the peasant, and thus increases the evil so far as land is concerned. The wages of the agricultural labourer, as distinguished from the farm servant, have, in consequence of this migration to the towns, increased considerably, and he can now earn on an average 2s. 6d. and 3s. per day; in some districts much more. It may be said that the wages of the day-labourer have increased one-third, and those of the farm-servants one-half, within the last thirty years; the rate of increase varies considerably; but I should suppose that, on an average, it may be taken at one-half for the whole country.

VI.—DENMARK—Report by Mr. G. Strachey, 18th December 1869.

(a). On a review of the whole subject, it would seem that the reign of Christian IX is witnessing, to use the classical phrase of Machiavelli, a return "*al segno*"—a return to the times of the Valdemars, when every rood had its man. The Danish peasantry, no longer "*taillable et corvéable à merci et miséricorde*," will soon own nearly all the soil of the kingdom. The improvement of their moral and material condition may, in part, be ascribed to the repeal of the English duties on foreign produce, to the substitution of political liberty for the impotence of

enlightened despotism, and to other causes. That the conversion of tenures has indirectly contributed to the general result may be accepted as an ascertained fact. From the systematic contradiction of reputable testimony, I am, however, disposed to infer that the free-holder is not a better farmer than the lease-holder. There is no doubt whatever that, in Denmark, culture on the large scale is more advanced than culture on the small.

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VII.—NORWAY—*Mr. Samuel Laing (1836).*

(a). If there be a happy class of people in Europe, it is the Norwegian bondor. He is the owner of his little estate; he has no feu duty or feudal service to pay to any superior; he is the king of his own land, and landlord as well as king; his poor-rate and tithes are too inconsiderable to be mentioned; his scat or land-tax is heavy, but everything he uses is in consequence so much cheaper; * * he is well lodged, has abundance of fuel, and that quantity of land in general which does not place him above the necessity of personal labour, but far above want or privation, if sickness or age should prevent him from working.

(b). The bondor or agricultural peasantry, each the proprietor of his own farm, occupy the country from the shore side to the hill foot, and up every valley or glen as far as corn will grow. This class is the kernel of the nation. They are in general fine athletic men, as their properties are not so large as to exempt them from work, but large enough to afford them and their households abundance, and even superfluity, of the best food. They farm, not to raise produce for sale, so much as to grow everything they eat, drink, and wear in their families. They build their own houses, make their own chairs, tables, ploughs, carts, hammers, iron-work, basket-work, and wood-work—in short, except the window glass, cast-iron ware, and pottery, everything about their houses and furniture is of their own fabrication. There is not, probably, in Europe so great a population in so happy a condition as this Norwegian yeomanry. A body of small proprietors, each with his thirty or forty acres, scarcely exists elsewhere in Europe, or, if it can be found, it is under the shadow of some more imposing body of wealthy proprietors or commercial men. Here they are the highest in the nation. The population of the few towns is only reckoned about one-eleventh of the whole, and of that, only a very small proportion can be called rich—too few to have any influence on the habits or way of thinking of the nation.

(c). *Housemen*.—The land is cultivated, as I have before explained, by a class of married farm servants who hold cottages with land on the skirts of each farm at a fixed rent for two lives, that of the cottier tenant and of his widow, under the obligation of furnishing a certain number of days' work on the main farm at a certain rate of wages. The ordinary rate is 12s., or 4½d. a day, with victuals; and for married farm servants 8s., also with victuals. In many of the best cultivated districts in Scotland, a similar system prevails; but the situation of the Norwegian houseman is much better than that of the Scotch married farm servant. Land not being of such value, he has more of it; and what he holds is not merely a keg or two of potatoes and a cow's grass in summer, taken from year to year for a tenant,

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and depending on his good will or on the endurance of his lease, but it is a regular little farm, keeping generally two cows and some sheep, and producing a full subsistence for a family, held for two lives. The law of the country has specially favoured this class of housemen. In default of a written agreement registered in the parish Court, the houseman is presumed to hold his possession, for his own life and that of his wife, at the rent last paid by him. He can give up his land and remove, on giving six months' notice, before the ordinary term, and is entitled to the value of the buildings put up at his own expense, which he may have left; but the landlord cannot remove him or his widow so long as the stipulated rent and work are paid. By law also a regular book should be delivered to the houseman, in which his payments are entered by the landlord, and which in case of dispute would be adjusted at the end of the year at the court of the parish. The sons and daughters of this class of housemen are the domestic servants and the ordinary labourers of the country. The territory being peopled fully up to its resources, it is only when a vacancy occurs in a houseman's place, that a young man can settle in life and marry; and his chance of obtaining the vacant house and land depends entirely upon his conduct and character. It is this check which keeps the class of servants and labourers as willing and obedient as in England or Scotland.

There are great advantages in this system of supporting and paying the labourers in husbandry. The land-owner or farmer might as well propose not to feed his horses when he has no work for them, as not to feed his labourers. By the community, and out of the general mass of its property, the agricultural labourers must be fed, whether there is work for them or not. This can only be done either by a poor rate, or by this way of giving them means to feed themselves by their own industry, and giving them a life rent property of their own to work upon, and fall back upon, in case of sickness, want of work, dearth of provision, or other general or local calamity.

It is a very common arrangement among this class in Norway, if old age, sickness, or the death of the houseman himself and the infancy of his children should prevent the occupant in possession from furnishing the stipulated rent and work, to give it over to a young man, reserving a living, with house-room and fuel, as long as the original life interest of the parties endures. Thus, the old, infirm, the widows and children, subsist without being burdensome as paupers; and the young man who works the little farm has his own living in the meantime, and the prospect of succeeding to the original life-renters.

VIII.—SWEDEN.

(a). A mean division of the land belonging to peasant farmers gives about 30 acres of tilled and 26 acres of natural grass land to each proprietor. Peasant-proprietors usually live in two-storeyed cottages, with two or three rooms on the ground-floor, and two gable-rooms on the upper-floor. * * The food of this class is substantial. * * They generally possess large stocks of clothes, which, however, are seldom used, except on Sundays and holidays. Their working attire is dirty, and seldom changed. As a class, they are decidedly above poverty, and a large proportion in comfortable circumstances.

(b). Small tenant-farmers are not numerous; and they are, as a class, decidedly inferior in solvency, independence, general circumstances and character to proprietors of even the smallest farms.

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—
PRUSSIA.

Para. 1, contd.

IX.—BADEN.

(a). The small peasant proprietors do not differ from the larger proprietors in respect to their dwellings, clothing, mode of living or education. Both enjoy the advantage of the same schools and instruction in their youth, and take part in the same way in all the affairs of public life. They cannot be said in any way to form a distinct class. * * There is said to be a larger proportion of active and intelligent farmers among the cow peasants, as they are called ("kuhbaueru"), that is, those who employ cows for the tillage of their fields, than among the richer peasants. The cow peasants often live better and more economically than the others, especially when the latter are obliged to keep a number of servants and assistants.

(b). There is, I believe, no doubt that since the revolution of 1848 there has been a great improvement in the houses of the peasants, in their mode of living, and in the cultivation of the soil; and their present condition must, on the whole, be regarded as favourable in respect to their means and general well-being.

(c). The tenants cultivate their farms in exactly the same way as the small proprietors do, and do not otherwise differ from them in regard to their mode and standard of living, solvency, independence, or general circumstances and character.

X.—PRUSSIA—*Report by Mr. Harriss-Gastrell.*

(a). The total amount of land debt to land value has been already estimated in this report at one-half; but from other accounts it can be estimated at two-thirds. This proportion, taking the whole kingdom, seems to hold good in the opinion of several competent persons, both for the large and small proprietors. There exists, however, a difference in the causes of incurring debts on the land. The small proprietor incurs them chiefly to secure equal portions for his children, without actually sub-dividing the land. He also incurs them, frequently, in the first instance, in order to buy his farm; and his tendency is to buy as large a farm as he can, instead of buying a smaller farm and retaining a large amount of circulating capital. In this respect he has, however, the too-frequent example of the large land-owner. On the other hand, the large proprietor seems to incur much mortgage debt in order to pay off farming debts, or to maintain a certain social position. Hence the indebtedness of the large proprietor often represents permanent loss, and is not extinguished, whereas the indebtedness of the small proprietor generally represents temporary needs, and is extinguished in course of time. Economically, the former indebtedness is often unproductive, and the latter indebtedness is generally reproductive.

(b). Though the large proprietors are few in number, the influence is considerable, and is for the most part beneficially exerted.

(c). As a class, the middle proprietors are considered to be in easy circumstances, and in many cases to be in possession of considerable

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PRUSSIA.

Para. 1, contd.

savings. Relatively to the large proprietor, both they and the small proprietors are in a better position in Prussia than are in England the corresponding middle and small agricultural tenants to the large proprietors. These middle proprietors and small proprietors seem to make comparatively little use of savings banks or consols, or other investments in national moveable investments; but they lend on mortgages and promissory notes, and still continue, in not a few cases, to prefer stockings and mattresses for their bankers. Many of these proprietors have still to pay off their rent charges for the abolition of real charges and services.

(d). The mass of small proprietors are only slightly above the social level, in intelligence and habits, of the agricultural labourer, and the majority of the middle proprietors have rather less general intelligence, and much less expensive habits, than their pecuniary position would lead one to expect.

(e). The small proprietor is usually exceedingly thrifty and generally free from the three chief vices of the agricultural labourer of the North-Eastern Provinces, *viz.*, immorality, drunkenness, and thieving.

(f). The agricultural labourer lives and dies a mere day labourer. He knows he cannot change his lot. How different all would be if he saw, ever before his eyes, the opportunity of acquiring a plot of land by the exercise of economy? The proof of this is repeated in the numberless examples which in this respect are offered by the Rhine Province and other districts with minutely sub-divided land. Thousands of agricultural labourers, who formerly had not a single inch of soil, have, by a period of economy, purchased a house and a plot of tillage. In the Western Provinces the social condition of the labourers is much better than in the Eastern.

XI.—BAVARIA—*Report by Mr. Fenton, 20th January 1870.*

(a). From all the information that I have been able to collect on the subject, I believe that it may be safely affirmed in general terms that the agricultural population, that is to say, the peasant proprietors, the farm servants and the day labourers, are well fed, well clothed, and well housed; and that, in these respects, as well as in general prosperity and well-being, they may compare favourably with the rural population of any State in Europe.

(b). As a rule, the peasant proprietors of the Southern Provinces are those who own the largest quantity of land, whilst the wealthiest men of this class, as regards money, are to be found in Central Franconia. The smallest holdings are those of the Palatinate, and individually the proprietors are probably the poorest in that locality, although the province, as a whole, is the most productive and one of the richest in the kingdom.

(c). The social condition of the peasant proprietor in the Southern Provinces differs in no perceptible degree from that of the men he employs on his farm. His education, his habits, and his dress are much the same: he, in fact, remains thoroughly a peasant, the main distinction between himself and his men being that the one is richer than the other.

(d). In the Franconian Provinces and in the Palatinate, the case is very different. The peasant-proprietors in these provinces being as a general

rule superior, as a class, to the ordinary run of agricultural labourers, both as regards education and knowledge of husbandry, and in social standing.

(e). There is further a marked difference in the general character of the peasants of the Northern and Southern Provinces, inasmuch as the Franconian is frugal and economical, whilst the Bavarian of the South is fond of copious fare, and is of a somewhat reckless and extravagant turn.

(f). One important measure, which was introduced some twenty years ago, has no doubt contributed greatly towards bringing about the existing condition of the peasant-proprietors, namely, the commutation of the seignorial charges (tithes) and abolition of servitudes, which, up to that period, had weighed upon a great portion of their lands.

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AUSTRIA.

Para. 1, contd.

XII.—AUSTRIA—*Mr. Lytton's Report, 15th January 1870.*

(a). Peasant properties are in general not heavily mortgaged. The cases in which a property is mortgaged for more than half its value are quite exceptional. A few years ago the total aggregate value of all investments on mortgage throughout the whole empire was estimated at from 15 to 1,800 millions of florins. There are no official statistics for the last two or three years. The usual rate of interest was, till quite recently, 5 per cent. But two years ago the laws against usury were abolished, and since then the rate of interest has risen to 6 per cent. But this rise in the rate of interest has been accompanied by a considerable increase in the annual number of loans upon moveable property.

(b). The small proprietor generally lives on his property. The great proprietor often resides elsewhere, and manages his estate indirectly by means of a steward. In most of the provinces, and especially in Upper and Lower Austria, the small proprietary is decidedly flourishing; the owners of small properties are able to maintain themselves in a considerable amount of comfort. Their mode of life is less expensive, less luxurious, and more primitive than that of our great tenant-farmers; but it is an easy and independent one, and they are a well-contented and well-to-do class.

(c). In Galicia, notwithstanding the natural fertility of the soil, the condition of the peasantry is by no means good. They live in wretched and flimsy tenements of wood and clay; their small properties are destitute of farm buildings; their fare is of the coarsest description; they are, in short, altogether a backward class. But I am informed by some of the great Galician proprietors that since 1848, and in consequence of the change then effected in the tenure of land, the condition of the Galician peasantry has greatly improved and is still improving.

(d). There can be no doubt that both the value of landed property and the prosperity of the whole agricultural class have been greatly augmented by the results of the great measures carried out in 1848 with regard to the land.

XIII.—RUSSIA.

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RUSSIA.

Para. 1, contd.

That the domestic powers of the patriarch, in opposing changes in the mode of life, clothing, or agriculture, must have had considerable effect in arresting the development of artificial wants, the satisfaction of which can alone incite the peasant to increased efforts of labour and to civilization, may, with great certainty, be inferred from the extraordinary increase of trade which has taken place since 1861 in articles of peasant-luxury, and principally in gay and more civilised clothing, and that, too, during a period which has certainly not been marked by any very great increase of prosperity among the agricultural population. On the contrary, the peasantry are, by many serious, although somewhat alarmist authorities, considered to be poorer, rather than richer, since their emancipation. They cannot, in any case, be said to be much more prosperous since their new position in the State;—the rupture of their relations with the lords, on whom they formerly depended for everything, and the great increase which has taken place in the local and imperial taxation of the country, must for a time weigh heavily on their slender resources. The dissolution of the family communes is of itself sufficient to reduce the peasantry for a time to comparative indigence, for each member of the family, on leaving it, receives but a share of its small accumulations and farm stock.

The determination which the Russian peasantry has evinced to overcome their temporary difficulties is a strong evidence of talent, energy, and virtue, in the Russian people, and one of the healthiest symptoms of improvement that has resulted from the civil rights granted to them by the Emancipation Act.

2.—GENERAL OBSERVATIONS.

On the respective merits of large and small farms, and regarding the wide distinction between small farms cultivated by proprietors, and the similar farms cultivated by tenants, we have the following testimony:—

BELGIUM.

I.—BELGIUM—*Mr. Grattan.*

(a). The comparative merits and disadvantages of cultivating small holdings and of farming on a large scale forms a question which admits of much controversy, although, in reality, it has been to a certain extent prejudged. The balance of opinion in the present day in most European countries, in view of the great changes introduced into agriculture by modern science and skill, is in all probability favourable to culture on a large scale. Yet the example of Belgium gives rise to much matter for reflection, and shows that a dogmatical decision on this point ought not to be too hastily arrived at. If, as is the case in England, farming operations are carried out in a spirit of enterprise, with the expectation of turning capital to a profitable account, there is no doubt that the extent of the farms ought to correspond with the resources and means intended to be applied to their cultivation. But if, on the other hand, as in most parts of Belgium, farming is carried on upon traditional principles, as it were, according to routine, and with restricted means,

the very extent of a farm is a bar to the application of a sufficient amount of capital to render it productive. These questions have been examined at considerable length in most of the works which treat of agriculture in Belgium.

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BELGIUM.

Para. 2, contd.

(b). M. de Laveleye, one of the latest writers on this subject, whose interesting "Essay on Belgian Agriculture" has been previously alluded to, very frequently compares the two systems, and often in terms favourable to the principle of small farming as practised in this country. He says with reference to the Condroz, the district of Belgium in which large holders are the most numerous:—

"It is thus that, according to the diversity of ideas and habits, farming upon a large scale ('la grande culture'), which in some countries favours agriculture, tends in others to retard it. Whenever in the Condroz a farm is divided, the land becomes at once better cultivated, and the number of cattle on the farm increased. The small land-owners, who cultivate properties varying from two to three hectares in extent, never allow their land to lie fallow; their crops are more varied and better regulated; the yield is much more abundant. They produce beet-root, rape seed, and turnips; their spelt and oats attain a greater height and produce more grain. Thus in the actual condition of habits and ideas amongst the rural population, the prevalence of large farms is one of the causes of the inferiority of culture in the Condroz."

(c). In speaking of Flanders, M. de Laveleye expresses an opinion equally favourable to small holdings. He says, with reference to the farms in the Pays de Wacs: "If the cultivators of land understand the proper methods of fertilising the soil, the sub-division of land, far from diminishing its productive power, will tend considerably to increase it. If they are ignorant of these methods, they will not succeed better, or as well perhaps, on large farms. It does not follow from this that the sub-division of land is to be held up as an ideal to modern society, for it entails upon man an increase of labour hardly compatible with the development of his intellectual faculties; but in view of the state of things existing in Flanders, it may be asserted that up to this day it has produced none but advantageous results, at least as far as production and rent are concerned."

(d). Another writer, Van Aelbroeck, who, in his valuable work on farming in Flanders, has entered into a very close examination of the system of small holdings, inclined unmistakably to the same opinion as that expressed by M. de Laveleye. He says, in allusion to the small farmers in those provinces: "Many of them carry on at the same time the business of weavers, and are considered as amongst the most profitable citizens of the State, seeing that they produce the largest population, encourage trade and commerce, and are the best farmers. They say in Germany, 'A poor peasant leads to poor husbandry'; but in Flanders they say, 'A poor peasant on a large farm leads to bad husbandry.' The size of the farm, says Van Aelbroeck, must not exceed the means and knowledge of the cultivator; and in this consists the theory and practice of the small Flemish farmers." The whole argument is in favour of small proprietorship; and he makes the following practical remarks for the purpose of illustrating the value of this principle: "If," he says, "a small cultivator possesses a bad piece of land, he

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BELGIUM.

Para. 2, contd.

will endeavour to improve it by constantly digging and turning up the soil; he will even labour for years to overcome its defective qualities, and render it productive; whereas land of a similar quality in the hands of a large proprietor is in general neglected, and will remain uncultivated." (See also Appendix XIV, para. 2, Section II, "Sub-division of Peasant properties.")

(e). Under the system of small proprietorship, as well as of small holdings generally, it is observed by persons who have practically studied the question, that the effect produced upon the land itself is the following:—

(1). It is better manured. Nothing capable of being turned into compost is wasted.

(2). It is kept cleaner. The artisan devotes all his leisure time to the cultivation of his small holding; and all spare hours of labour are utilised by the whole family, his wife and children assisting him in weeding and the lighter occupations connected with the land.

(3). It is more productive. When half of one crop is gathered, the other half is already planted or sown. But roots, for example, are often planted between rows of potatoes, the latter being removed by hand as often as they are wanted. Land containing 90 per cent. of silica, it is asserted, may under this system be made to produce potatoes, and even rye and other crops, by the continuous application of manures in a couple of seasons.

(f). It must be said, however, that many agricultors in this country do not approve of the extreme sub-division of land which exists in Belgium, and would prefer to see greater extension given to the system of large holdings, combined with the various appliances of modern scientific culture, which as yet are comparatively but little employed in this country. Cheapness of production, they say, can only be attained by the application of such means, sustained by large capital, or, in other words, by the introduction generally of what is termed extensive culture. Such a system is, however, of slow growth, and would necessitate very considerable changes in the conditions under which landed property is at present held in this country. Viewing matters, however, as they now exist, a very competent authority states it as his opinion that, in order to cultivate land on the most approved modern principles, farms ought in no case to fall below a minimum of 20 hectares, or about 45 acres—a limit which is, of course, exceeded by a considerable number of farms in this country. But upon inquiring from the same person whether the system of farming upon a very small scale was prejudicial to public interests, or to the land itself, the reply was that such was not the case; that small holdings could be made very profitable to their owners, and that the number and variety of crops which are produced from the land under this system could not be said to be injurious to the soil, provided the latter were sufficiently manured and in other respects judiciously managed. It would be erroneous, however, no doubt, to suppose that a system of husbandry such as that which has just been described as existing in Belgium, could be applied with advantage in all other countries indiscriminately; for, in order to meet with success, it must have been developed naturally by the force of

circumstances and events, and be, moreover, in harmony with the customs and institutions of the inhabitants, and adapted to the climate and general capabilities of the soil.

(g). The Belgian rural population, especially in the Flemish provinces, appear to combine the leading qualifications requisite to success in the cultivation of small properties. They are steady, sober, and persevering, prudent and economical in their habits, and are possessed of all necessary experience in whatever relates to the management of land. They are, moreover, extremely attached to the soil on which they were born and brought up, and are especially devoted to agricultural life; and it is these qualities which have enabled them to attain great success, and a considerable degree of prosperity as small cultivators, in spite of natural disadvantages in respect of soil (except in specially favoured localities), which it has required the continuous industry of many generations to overcome. Other populations might not be qualified to encounter similar obstacles with equal success.

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BADEN.

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II.—PORTUGAL.

PORTUGAL.

The prevalent public opinion as to the advantages or disadvantages of the system of small proprietors in this country would appear to be that where, as is frequently the case in the north of Portugal, the sub-division of the land has been carried to excess, the result has been to lower the standard of living of the rural population, and to create an intense competition for land, which, while it stimulates the avarice of the people in acquiring it, leaves them an easy prey to usurers after it has been acquired. On the other hand, it is held that this system, here as elsewhere, under favourable circumstances, conduces to a more careful cultivation of the soil and to a larger production from it, and that it encourages among the peasant-proprietors and their families the virtues of industry, temperance, and frugality. The objections to the system might be easily overcome, if a well-considered scheme were at once adopted for bringing under cultivation the many millions of acres of land which now lie needlessly barren; while its advantages would, by the same process, be intensified and spread over a larger surface; and, as this system of tenure is especially in harmony with the highly democratic form of government which Portugal now enjoys under a constitutional monarch, and is moreover encouraged by the nature of the laws regulating the descent, division, and transfer of land, there can be little doubt that it will eventually be the predominant form of land occupation throughout Portugal.

III.—BADEN.

BADEN.

The views of statesmen and philosophers, as to the advantages of a large number of small peasant freeholders, are, as might be expected, very divergent. The prevalent public opinion is that the system of small freeholds tends to promote the greater economical and moral prosperity of the people, to raise the average standard of education, and to increase the national powers of defence and taxation.

It seems to be a generally established fact that the small farmers realise larger returns than the large farmers do from the same number

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of acres, and the result is that large properties and large farms are disappearing, and being parcelled out among a number of small farmers. In fact, the price of landed properties is determined less by their intrinsic value than by the possibility of selling or letting them in small holdings. Certain crops, such, for instance, as tobacco, are wholly unsuited to a system of "grand culture."

WURTEMBERG. IV.—WURTEMBERG—*Mr. Phipps (20th November 1869).*

(a). Writing in Germany, the small proprietors may be called well housed, well fed, and well clad, their standard of living being, however, it is true, very low. In the country, potatoes form the staple food of the poor, and but little meat is consumed; the poorest, however, are hardly ever without rye-bread. In general, farinaceous substances are much used for food. * * The houses are generally large, solidly built, and very rarely, in the case of small proprietors, isolated; but in villages, often at some little distance from the respective properties.

(b). In estimating the standard of living, and the general circumstances of the small proprietors, it must be borne in mind that, in Upper Suabia, parts of the Black Forest, and Danube district, the farmers are of a superior class; they and their families live habitually on meat; their clothing is of good quality, and their daughters may be seen wearing silk dresses.

(c). Wurtemberg is remarkable as the country where sub-division of land is carried to the greatest extreme, and the sad experience of yet recent years of scarcity has led public opinion to consider the extraordinary number of small independent cultivators as the main cause of such misfortunes. One of the most distinguished writers on the subject argues, however, that the statistics give a false and exaggerated idea of the case. Allowing that there are 150,000 independent farmers, in the actual acceptation of the term, with farms of on an average 30 acres each, it is declared that the existence besides these of 180,000 small proprietors of land is attendant with no evil results. The possession by almost every family, among the rural population, of a small piece of land from which they derive subsistence for their livestock, and vegetables for their domestic consumption, does not, it is declared, have any bearing on the question of small proprietorship and sub-division of the soil, but is only a peculiarity of social existence.

(d). As far as the class of really small peasant cultivators are concerned, there is no doubt that the evils of small proprietorship are felt most sensibly. In the Neepar, and part of the Black Forest districts, there is hardly a commune without a number of dwarf properties, and many where there are no middle-sized properties at all, and where small properties possessing any sort of vitality are in the minority. In many communes, owing to want of sufficient area or the poverty of the soil, the inhabitants are unable to obtain a livelihood from agriculture, and the conditions of obtaining a livelihood from industrial pursuits are wanting, and consequently a redundancy of population prevails. Speaking generally, however, the evils of small holdings are not so sensibly felt in Wurtemberg as for instance in Ireland. * *

(e). The evil of small properties is also to some extent modified in Wurtemberg by so many of the small cultivators living together in one village, which enables them to aid each other in the work of their farms, which introduces to some extent the co-operative principle, and gives them the advantage of making use of at least the elementary descriptions of machinery which have as yet been introduced in the country. It may finally be stated that public opinion has undergone considerable change of late years as to the advantages or disadvantages of the sub-division of property, especially since the competition of Hungarian corn has taken away the monopoly which South Germany formerly possessed of the Swiss market, and since its increased importation by the greater millers.

(f). The political economists in this country are in general of opinion that small proprietors, who complete their means of livelihood by industrial pursuits, are the class which it is most desirable to encourage; whereas formerly agriculture on a large scale was considered the most profitable. The laws in themselves, by the equal division of paternal property, favour the perpetuation of small proprietors, except in the districts added to this kingdom in 1803, where, owing to the relative inferior fertility of the land, large farms are a necessity, and where the sub-division of properties would, owing to the absence of industrial pursuits, be the ruin of the whole district.

WURTEMBERG—*Mr. Gordon (20th November 1869).*

(g). With regard to the state of public opinion as to the advantages or disadvantages of small proprietorships, I am inclined, from such inquiries as I have made, to agree with Mr. Phipps that the former are generally considered as prevailing over the latter. As one influential authority in this direction, I may instance Baron Varnbüler, who is himself a considerable landed proprietor for this country, but who justifies his opinion on the point (which he also printed in 1846) by saying that, admitting the system of sub-division of property to occasion increased expense of cultivation, it renders, notwithstanding, the land absolutely more productive, inasmuch as the small proprietor works his piece of ground more with a will than he would do as a tenant or labourer; tends it more carefully; works early and late at hours he would never do under another system; and, finally, takes a higher and better position as a member of society, and feels himself as owner of his acre or two of land, or less, a more important individual—as weighing more in the body politic—than he would do, for instance, as holding to his name in the savings bank several hundred or more of florins than he might otherwise have laid by from hired labour or industrial pursuits.

(h). I think it may prove interesting to add the following translation of the passage by which Baron Varnbüler sums up his remarks on this subject in the pamphlet to which I have referred: "Any one who has had opportunities of intercourse with the people, will recollect how, among the poorer classes, industry, good faith, economy, moral behaviour, are accustomed to attach themselves to the acquisition of a small property; how the house-servant, or farm labourer, or small mechanic, usually doubles all his efforts, from the moment when he has obtained the

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right of calling a small plot of land his own; as also how he seems to place all his happiness in maintaining, extending, and tending this possession, and how incredibly large are the returns which, in addition to his other labour, he is enabled to extract therefrom. Let it not be forgotten either, that all these small proprietors are bound to the course of order by this, it is true, absolutely small but relatively large pledge. Finally, let those parts of Wurtemberg where this sub-division of land is greatest, be examined on the spot, in order to convince the inquirer of the high degree of productiveness to which the ground is brought in those quarters, and for what a mass of wants it is made there to suffice, before he even thinks of disturbing this source of industry."

(i). With all this, however, Baron Varnbüler guards himself carefully against being supposed to advocate the sub-division of property abstractedly, or to condemn large properties. His pamphlet, from which the above is extracted, is on the necessity of further legislation for the furtherance of industry in general; and he would be understood only to contend that the sub-division, and power of further and continued sub-division of property, is even, with its acknowledged disadvantages, at present the smaller, and indeed a necessary evil—at all events, a lesser one than their legal restriction would be—and that the natural correction for it lies in the development of industrial activity.

PRUSSIA.

V.—PRUSSIA.

The prevalent public opinion is decidedly in favour of peasant proprietorship. It is also generally in favour of small proprietorship, of which the advantages are held to outweigh the disadvantages. The conversion of all feudal tenures and relations into absolute ownership and freedom is considered to have been the only possible solution of the problem at the beginning of this century, which could have enabled Prussia to increase so rapidly her national wealth and the welfare of her people. For this Prussia will ever be grateful to the many sharers in the Stein-Hardenberg legislation, who through many difficulties have in that manner solved the problem.

The influence of the large land-owners has not been diminished by the Stein-Hardenberg legislation. On the contrary, there is little dissent from the opinion that the relations of the large land-owner with the population of his district have been thereby so improved that his influence is now greater than it formerly was. This is easy to understand; for his natural influence, as representing the intelligence of the district, has far more play when the surrounding population have no interest in connection with him antagonistic to his own. The powers for good of the large land-owner, and his exercise of a legitimate and natural influence, should be encouraged.

BRAMPTON.

VI.—BREMEN.

The agricultural population is, on the whole, very well satisfied with the present state of things.

VII.—SAXE COBURG GOTHA.

The small proprietors of the middle class of agriculturists are greatly respected. A number of substantial land-owners cannot fail to be a great advantage to a country where they purchase many articles for their own use and consumption, and thereby further trade and industry. The public revenue is a gainer by them, as the taxes they pay are sure and considerable. They are altogether respectable and very industrious people, and not disposed to take any part in acts of opposition.

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VIII.—FRANCE.

There is little or no emigration to foreign countries, but the great towns absorb the labouring population; and this, as regards agricultural labour, has the same effect. * * The prevalent public opinion as to the advantages or disadvantages of the tenure of land by small proprietors is decidedly that it has been advantageous to the production of the soil, and has tended to the improvement of the material condition of the agricultural population. The conclusion arrived at in the report which accompanies the "*Enquête Agricole*," and by M. deLavergne, is that the division of the land has been attended with great benefit, both as regards the production of the soil and the condition of the rural population; but that at the same time an unlimited partition of the small properties, as they already exist, would destroy this benefit, and be productive of serious evil.

IX.—AUSTRIA.

Between the relative social, intellectual, and economical conditions of the great and small proprietors, however, there is an enormous difference. Whilst, on the one hand, there is undoubtedly a marked improvement in the social and intellectual standard of the Austrian peasantry since the emancipation of it in 1848, and whilst the general value of the whole productive soil of the empire has so greatly improved that the market price of land has, in most provinces, risen more than 100 per cent. since that period; on the other hand, there can be no doubt whatever that every impulse in the way of agricultural improvement has come, and continues to come, exclusively from the great land-owners. It is to them alone that the introduction of improved machinery, manure, drainage, breeds, &c., is owing, even in cases where such improvements have been successfully adopted by the small proprietors. In this respect the peasantry have shown no initiative. My personal impression is, that the two classes have mutually benefited, and greatly benefited, by their co-existence and juxtaposition, and that the total annihilation of their class would involve a material disadvantage to the remaining one. But it is a notorious and striking fact that, in this most agricultural empire, agriculture flourishes only in those provinces where great estates and great land-owners prevail, and that, in all those parts of the country where the peasant-proprietor predominates, the state of agriculture is singularly rude and primitive.

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X.—MR. SAMUEL LAING.

(a).—*Notes of a Traveller (1842).*GENERAL
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(1). If we listen to the large farmer, the scientific agriculturist, the political economist, good farming must perish with large farms. The very idea that good farming can exist, unless on large farms cultivated with great capital, they hold to be absurd. Draining, manuring, economical arrangements, clearing the land, regular rotations, valuable stock and implements,—all belong exclusively to large farms, worked by large capitals and hired labour. This reads very well: but if we raise our eyes from their books to their fields, and coolly compare what we see in the best districts farmed in large farms with what we see in the best districts farmed with small farms, we see, and there is no blinking the fact, crops on the ground in Flanders, East Friesland, Holstein—in short, on the whole line—of the arable land of equal quality—of the Continent, from the Sound to Calais, than we see on the line of British coast opposite to this line, and in the same latitudes, from the Firth-of-Forth all round to Dover. Minute labour on small portions of arable ground give, evidently, in equal soils and climate, a superior productiveness where these small portions belong in property, as in Flanders, Holland, Friesland, and Ditmarsh in Holstein, to the farmer. It is not pretended by our agricultural writers that our large farmers, even in Berwickshire, Roxburghshire, or the Lothians, approach to the garden-like cultivation, attention to the manures, drainage, and clean state of the land, or in productiveness from a small space of soil not originally rich, which distinguish the small farmers of Flanders and their system. In the best farmed parish in Scotland or England, more land is wasted in the corners and borders of the fields of large farms, in the roads through them, unnecessarily wide because they are bad, and bad because they are wide, in neglected commons, waste spots, useless belts and clumps of sorry trees, and such unproductive areas as would maintain the poor of the parish if they were all laid together and cultivated. But large capital applied to farming is of course only applied to the very best of the soils of a country. It cannot touch the small unproductive spots which require more time and labour to fertilise them than is consistent with a quick return of capital. But although hired time and labour cannot be applied beneficially to such cultivation, the owner's own time and labour may. He is working for no higher returns at first from his land than a bare living. But in the course of generations, fertility and value are produced, a better living, and even very improved processes of husbandry, are attained. Furrow draining, stall feeding all summer, liquid manures, are universal in the husbandry of small farms of Flanders, Lombardy, and Switzerland. Our most improving districts under large farms are but beginning to adopt them. Dairy husbandry even, and the manufacture of the largest cheeses, by the co-operation of many small farmers; the mutual assurance of property against fire and hailstorms, by the combination of small farmers; the most scientific and expensive of all agricultural operations in modern times; the manufacture of beet-root sugar; the supply of the European market with flax and hemp by the husbandry of small farmers; the abundance of legumes, fruits, poultry, in

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the usual diet of the lowest classes abroad, and the total want of such variety at the tables even of our middle classes, and this variety and abundance essentially connected with the husbandry of small farmers,—all these are features in the system of the occupation of a country by small proprietor farmers, which must make the inquirer pause before he admits the dogma of our land doctors at home, that large farms worked by hired labour and great capital can alone bring out the greatest productiveness of the soil, and furnish the greatest supply of the necessaries and conveniences of life to the inhabitants of a country. * * *

(2). The traveller who looks without prejudice or preconceived opinion at the state of the crops on the Continent wherever the small farming and small proprietary system is predominant, at the abundance and variety of food afforded by it to the rest of the population, and at the way of living, the cheapness, the physical comforts in diet and lodging of the working classes, and the whole social effect of the occupancy of land in small farms, will come to this conclusion, *viz.*, that the large farm money-rent system, which is almost entirely confined to Britain, is a kind of political establishment, the growth of artificial arrangements of society, and fostered by the classes it supports; but is in reality not essential to good husbandry, or to the utmost agricultural productiveness of a country, or the utmost well-being of the inhabitants. This establishment could not subsist but by protective legislation, and must give way when it comes in competition with agricultural production under the more natural small-farm system. * * *

(3). The quantity actually raised on the great scale, as in a whole country, undoubtedly is greatest on the system of small farms under a garden-like cultivation. The densest populations in Europe are those of Flanders and of Lombardy, and they are subsisted in comfort by land cultivated by small farmers. The experience of half a century in France proves that by the occupation of the country under small working farmers, the land is producing one-third more food, and supporting a population one-third greater than it did when it was possessed in larger masses. America also proves that the land in the hands of small working farmers administers all that a people of similar tastes and habits to our own require, and far more abundantly than our system. "There is much food," says Solomon, "in the tillage of the poor." There is much sound political economy to be found in Solomon's Proverbs.

(4). A return to the small farm system, whether it be for good or for evil, must inevitably, although gradually, follow the abolition of the Corn Laws. Farming in our own country must inevitably follow the cheaper modes of production with which it is brought into competition, for it is the law of all production that cheapness commands both the markets and the modes of producing. * * *

(5). The maize, or Indian-corn, is both physically and morally the equivalent among the populations of the south to the potatoe among those of the north. * * The cultivation of maize acts upon the amount and condition of the population, on their numbers and habits, precisely as that of potatoe. The moral results have been the same from both. Where the land is not the property of the cultivators, but of a nobility, as in the Sardinian, Neapolitan, and Papal States, the cheap and inferior

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but plentiful food, in proportion to the land and labour bestowed on its production, has brought into existence a great population miserably ill-off. The difference of value between their inferior food of maize and the value of other kinds of food has only gone into the pockets of their land-owners and their employers; their condition has been deteriorated by a cheaper food, increasing the quantity, and thereby reducing the value of labour to a rate equivalent to a subsistence upon an inferior and cheaper diet. Where the land, again, is the property of the labourers themselves, as in Switzerland, in Tuscany, in France, the cheaper and inferior food leaves them more of a superior, higher-priced food for market or more land to produce marketable provisions from, and what they save in their diet goes into their purse. Thus the very same cause, that is, cheap articles of diet, produces thrifty, active, industrious habits among the Swiss, Tuscan, and French peasants, and lazy, trifling, lazzarone habits among the labourers of the Neapolitan, Papal, and Sardinian States. It is the possession of property that regulates the standard of living in a country as in a single household, and fixes the general ideas and habits with regard to the necessary and suitable diet, lodging, and clothing, and this standard regulates the wages of labour. People who have at home some kind of property to apply their labour to, will not sell their labour for wages that do not afford them a better diet than potatoes or maize, although in earning for themselves they may live very much on potatoes and maize. We are often surprised, in travelling on the Continent, to hear of a rate of day's wages very high considering the abundance and cheapness of food. It is want of the necessity or inclination to take work that makes day labour scarce, and considering the price of provisions, dear in many parts of the Continent, where property in land is widely diffused among the people.

(b).—*Observations in Europe (1850).*

(1). In Flanders, Holland, Friesland, about the estuaries of the Scheldt, Maes, Rhine, Ems, Weser, Elbe, and Eyder, in a great part of Westphalia and other districts of Germany, in Denmark, Sweden, and Norway, and in the south of Europe, in Switzerland, the Tyrol, Lombardy, and Tuscany, the peasants have, from very early times, been the proprietors of a great proportion of the land. France and Prussia have, in our times, been added¹ to the countries in which the land is divided into small estates of working peasant proprietors. In any country of Europe, under whatever form of government, however remotely and indirectly affected by the wars and convulsions of the French Revolution, and however little the laws, institutions and spirit of the government may as yet be in accordance with this social state of people, the tendency during this century has been to the division and distribution of the land into small estates of a working peasant proprietary—not to its aggregation into large estates of a nobility and gentry. This has been the real revolution in Europe. The only exception is Great Britain. The tendency with us during the present century has been directly the reverse.

¹ Since Mr. Laing wrote, Russia and Austria have been added to the list.

It has been to aggregate small estates into large, and in Scotland and a great part of England, to aggregate even small tenant occupancies into large farms.

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(2). The clean state of the crops here, in Flanders—not a weed in a mile of country, for they are all hand-weeded out of the land, and applied for fodder or manure—the careful digging of every corner which the plough cannot reach, circles round single trees close up to the stem, being all dug and under crop of some kind, show that the stock of people to do all this minute hand-work must be very much greater than the land employs with us. The rent-paying farmer, on a nineteen years' lease, could not afford eighteen pence or two shillings a day of wages for doing such work, because it never could make here any adequate return. But to the owner of the soil, it is worth doing such work by his own and his family's labour at odd hours, because it is adding to the perpetual fertility and value of his own property. He may apparently be working for a less return than ordinary day's wages; and, it may be, is making but a bare subsistence, worse than that of a hired farm servant, or a labourer on day's wages on a large farm; but in reality his earnings are greater than those of any hired servant or labourer, however well paid, because they are invested in the improvement of his own land, and in the continual advance of his own condition by its increasing fertility, in consequence of his labour bestowed on it. His piece of land is to him his savings bank, in which the value of his labour is hoarded up, to be repaid to him at a future day, and secured to his family after him. He begins with a potatoe-bed on the edge of a rough barren piece of land, and with the miserable diet it affords him; but, the land being his own, he gets on by the application of his labour to it, to crops of rye, wheat, flax, sonn grasses, and to the comforts of a civilised subsistence.

(3). Where land, whether it be a single farm, a district or a whole country, has not merely to produce food, fuel, clothing, lodging, in short, subsistence in a civilised way to those employed on it, but also a rent to great proprietors, and profit to large farmers, the tenants of the land-owners, it is evident that only the land of the richest quality can be let for cultivation and can afford employment. What cannot afford rent to the landlord and profit to the tenant, as well as a subsistence to the labourer, cannot be taken into cultivation at all, until the better sort of land becomes so scarce that the inferior must be resorted to, and from the scarcity and consequent dearth of the better can afford a rent and profit also. This appears to be the glimmering of meaning in the foggy theory of rent given us by our great political economists. They forget that God Almighty did not create the land for the purpose of paying rents to gentlemen and profits to gentleman farmers, but to subsist mankind by their labour upon it; and that a very large proportion of the land of this world, which never could be made to feed the labourers on it, and to yield besides a surplus of produce affording rent and profits to another class, could very well subsist the labourers, and in a comfortable civilised way too, if that were all it had to do. It could produce to them food, fuel, clothing, lodging, or value equivalent to these requirements of a civilised subsistence, but not produce a surplus for rent and profit, over and above their own civilised subsistence. The labour applied to such land is not thrown away or unproductive; it is adding

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every year to national wealth and well being, although not producing rent and profits, because it is gradually fertilizing the soil of the country, is feeding the population of small land-owners working upon it, and supporting them in a civilised and assured mode of subsistence, which is gradually improving with the improvement of the soil. * *

(4). The traveller who has an eye to the agricultural state of other countries compared to that of his own, cannot fail to observe that the land of the Continent is cultivated up to its capability of cultivation and of employing its inhabitants much more closely than the land of England or Scotland. Whatever admits of being ploughed or dug is cultivated. The land may not be so productively and profitably cultivated as in England or Scotland, although this assumption of superior productiveness on equal quality of soils may be reasonably questioned, but it is more generally cultivated. All land that is at all capable of returning a crop, should it only be a return of the seed and of the labourer's subsistence, is under culture. Woods and groves planted and preserved for ornament, parks, pleasure grounds, lawns, shrubberies, old grass fields of excellent soil producing only crops for luxury, such as pasture and hay for the finer breeds of horses, village greens, commons, lanes between fields, waste corners, and patches outside of the fences or along the roads, hedges, ditches, banks, walls—all which together occupy perhaps as much land in England as the land under crops of grain—are very rare on the Continent. The plough and the spade work up to the door-steps of the most respectable country mansion, and to the gates of the most considerable cities. There are, no doubt, vast tracts of land on the Continent too sterile and thin of soil to admit of culture at all, even with the spade of a peasant-proprietor working on it for his own subsistence only; but whatever land affords a reasonable hope of reproducing the seed and food that must be expended on its culture, should it only be a crop of rye (a grain that puts up with the poorest quality of soil), seems to be occupied and cultivated. The land of a quality that never could produce rent to a landlord, and profit and a return of his capital to the tenant, is not, as in England and Scotland, lying waste and unused, but is cultivated for the mere return of the seed and subsistence of the labouring cultivator. This is the natural consequence of the small estate occupancy of the land, and of equal inheritance. The want of manufacturing employment has thrown all labour upon the land, and the land is consequently cultivated closely up to its capability of culture. The land with us is cultivated only up to its capability of profitable production to the landlord and tenant. Rent and profits set limits to cultivation in Britain; but positive sterility, the utter incapability of the soil to reproduce the seed and subsistence of the labourer working on it as proprietor for his own living, seem the only limit to cultivation abroad. * *

(5). In Scotland it is estimated that more than one-half of the land susceptible of cultivation is not cultivated; that of the 11½ millions of acres capable of cultivation, 5½ millions only are cultivated, and 6 millions are not cultivated. And why is this larger half not cultivated in a country of which the agricultural system and agricultural improvements are held up as a model? Simply because it would

not repay the expense of enclosing, draining, building houses and offices, and bringing it into the state of rent-paying arable land. It is not of a quality to afford a rent to a landlord, profit to a tenant for his capital and skill, and to replace the outlay of money in its improvement, within any period of a lease. Yet such land would subsist a population of small proprietors working and living upon it. Having neither rent to a landlord, nor profit over and above their subsistence to produce, they would earn a subsistence, poor and scanty no doubt at first, but gradually improving and increasing with the improvement of the soil by their labour on it. This uncultivated land could employ and subsist as great a body of agricultural labourers, if they were only owners of the land, as all the agricultural labourers employed and subsisted by the other half that is at present cultivated and paying rent. In England, as in Scotland, as much land in every rural parish is lying useless, in wastes, commons, neglected patches, lanes not required, corners of fields, sides of roads, and such uncultivated spots, as would keep and endow all the poor of the parish. Of the cultivated land in England, how much is producing little or no employment or subsistence for the population, but is merely under crops of luxury, such as hay and pasture for the pleasure-horses of the upper classes! How much is laid out in parks, lawns, and old grass-fields pastured over by cattle, horses, and sheep roaming at large, and returning no manure of any value to the farmer for their food! And how much arable land, for the want of that very manure, is in naked fallow, bearing no crop, but resting, as it is called, that is, exhausted and waiting for its turn to receive manure! Over-population is only relative to under-production, consequent on these artificial or conventional circumstances in the use and distribution of land.

(c).—*Denmark.*

Copenhagen has more palaces in her streets and squares than ships in her harbour. The extreme state of pupillage in which this people is kept, not only extinguishes all industry and activity, but from the host of functionaries who must be employed where a government attempts to do everything, and regulates and provides in matters which a people can best manage for themselves, it consumes all their capital, and leaves them nothing to be active and industrious with. * * The total number thus supported by the 1,223,807 individuals who form the population of Denmark is 121,444 persons; or every 10 individuals have to support 1 who is not engaged in productive industry, but is a public functionary or a pauper living upon their productive industry. * * If to these perpetual drains upon the earnings of the industrious in the middle and lower classes be added the enormous waste of the capital and tenure of the country in palaces, gardens, shows, military duties, and such objects as reproduce nothing, it is not extraordinary that the people are sunk in poverty and sloth, although occupying the richest soil and most advantageous situation in the north of Europe.

MR. SAMUEL LAING (*Journal of a Residence in Norway*).

It is vastly better, however, in another respect; they have no rents to pay, being the owners of the farms they cultivate. Here are the

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highland glens without the highland lands. It is, I am aware, a favourite and constant observation of our agricultural writers that these small proprietors make the worst farmers. It may be so; but a population may be in a wretched condition, although their country is very well farmed, or they may be happy although bad cultivators. The country around Rome was certainly better farmed under the Romans than it is now under the Pope. Was it a happier country then, when all the agricultural labourers were slaves working in chains, and driven to and from their work like beasts of burden? Our West Indian colonies were better farmed under the slave system, especially when fresh slaves could be imported from Africa, than probably they can ever be by free labour. Which is the happiest state of the population? Good farming is a phrase composed of two words which have no more application to the happiness or well-being of a people than good weaving or good iron-founding. The producer of grain who is working for himself only, who is owner of his land, and has not a third of its produce to pay as rent, can afford to be a worse farmer, by one-third, than a tenant, and is notwithstanding in a preferable condition. Our agricultural writers tell us, indeed, that labourers in agriculture are much better off as farm servants than they would be as small proprietors. We have only the master's word for this. Ask the servant. The colonists told us the same thing of their slaves. If property is a good and desirable thing, I suspect that the very smallest quantity of it is good and desirable; and that the state of society in which it is most widely diffused is the best constituted. * * The common sense of the majority of mankind would, I apprehend, in spite of the most curious and subtle argument, decide that the forty families in these two highland glens, each possessing and living in its own little spot of ground, and farming well or ill as the case may be, are in a better and happier state, and form a more rationally constituted society, than if the whole belonged to one of these families (and it would be no great estate), while the other thirty more families were tenants and farm servants. Add a few ciphers to the numbers, and you have Ireland, Scotland, England, with their millions of people, their soil possessed by a few thousand proprietors. It is impossible such a constitution of civil society can long exist without some great convulsion unless mankind be retrograding to the state in which the feudal law of primogeniture originated.

XI.—MR. J. S. MILL (*Principles of Political Economy, Book II, Chapter VII*).

(a). Those who have seen only one country of peasant proprietors, always think the inhabitants of that country the most industrious in the world. There is as little doubt among observers with what feature in the condition of the peasantry this pre-eminent industry is connected. It is the magic of property, which, in the words of Arthur Young, "turns sand into gold."

(b). The idea of property, however, does not necessarily imply that there should be no rent, any more than that there should be no taxes. It merely implies that the rent should be a fixed charge, not liable to be raised against the possessor by his own improvements, or by the will of a

landlord. A tenant at a quit-rent is, to all intents and purposes, a proprietor; a copy-holder is not less so than a free-holder. What is wanted is permanent possession on fixed terms: "Give a man the secure possession of a bleak rock, and he will turn it into a garden; give him a nine years' lease of a garden and he will convert it into a desert."

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XII.—SMALL PROPRIETORS AND COTTIERS.

(a).—MR. S. LAING (*Observations on the State of Europe, 1850*).

(1). We may give greater fertility to the soil by more careful and skillful cultivation of it, and thus increase the quantity of its marketable produce. This is unquestionably adding to the wealth of a nation—this improvement of its soil. The only mistake here is, that it is assumed, without proof, and without reference to the husbandry of other countries, that this improvement can only be effected by large capitals applied to large farms, and that farms of from three or four hundred a year of rent to a thousand or fifteen hundred a year must, in the nature of things, be better found—better ploughed, drained, manured, cleaned, and cultivated—than the same land would be in small farms held in property by small farmers. Now, this assumption is not only not proved, but is directly contradicted by the garden-like cultivation of all this country, of Flanders, and of Belgium, Holland, Friesland, Holstein, and wheresoever small farms in the hands of a class of working peasant proprietors cover the face of the land. It stands, indeed, to reason that no large farm (suppose one, for instance, of 500 acres) can, by dint of capital and hired labour, be made literally a garden in productiveness, in the cropping, cleaning, weeding, manuring, and cultivation of it; but the five hundred acres could be made into a hundred gardens of five acres each, and each dug, raked, manured, weeded, and cropped, by the family it supports, and each as productive as any kitchen garden or market garden,—a productiveness which no large farm even can approach, because, as stated before, hired labour could not be applied to such minute cultivation of ordinary crops, and leave a surplus for rent and profits to a landlord and tenant, besides the hire or subsistence of the labourer.

(2). The wretched cultivation of small tenant farms in Ireland and in Scotland before the small tenants were ejected and the land brought into the large farm occupancy, is generally adduced as proof undeniable that small farms are incompatible with good husbandry, and with bringing the land of a country to its utmost productiveness and fertility. But it only proves that the tenure of a small farm, held from year to year, or even for a term of years, at a heavy rent, and under services of time and labour to the landlord, tacksman, or middleman, is essentially different from that of a small farm held in property by the farmer himself, and for which he has neither rent nor services to pay; and that this difference is a bar to all industry or improvement by the class of small tenant farmers in Ireland or Scotland, because rent rising, in proportion to any improvement made, at the end of each lease or term of years, would swallow up all that industry might produce. The small tenant-farmer, in fact, would be only working against

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himself, and for the purpose of raising his own rent, and deteriorating his own condition at a future day by his industry and improvements. It only proves the essential difference in the condition of the two classes of small peasant-proprietors and small peasant-tenants; and that the moral stimulus of giving his own time and labour to the improvement of his own property will make the peasant-proprietor cultivate and improve land which cannot afford rent and profit to a landlord and tenant, although it yields a subsistence improving yearly to himself as labourer; and that the want of this moral stimulus of a property in his land and labour makes the peasant-tenants, on the finest soils in Ireland and Scotland, slothful, unimproving, and starving. This essential difference is very strikingly brought out in Ireland and Flanders. The peasant-tenants of small farms in Ireland are sunk in misery. The peasant-proprietors in Flanders, on soil originally inferior, working on their own little farms on their own account, from generation to generation, have brought them to a garden-like fertility and productiveness, and have made the whole face of the country a garden and a pattern to Europe. Is there any reasonable ground for drawing a sweeping conclusion against the occupancy of a country by small peasant proprietary from the condition or husbandry of a class so entirely different in their circumstances, motives of action, and social position, as the small peasant-tenants of Ireland or Scotland.

(b).—M. DE LAVELEYE (*Cobden Club Essays*).

Notwithstanding all the arguments of the most distinguished economists in England, especially Mr. John Stuart Mill, to the contrary, peasant property in land seems still to be regarded there as synonymous with wretched cultivation and large estates with rich and improved farming. The reason is obvious: the English are accustomed to compare the farming of their own country with that of Ireland. In fact, however, both England and Ireland are exceptions; one on the right, the other on the wrong side. In England there exists a class of well-to-do and intelligent farmers such as are not to be found anywhere else. In Ireland, on the contrary, there is no peasant property, but only large estates in combination with small tenure, often with a middleman between the landlord and the cultivator—of all agrarian systems the most wretched. Added to this, many centuries of oppression and misgovernment made the Irish people more improvident than the inhabitants of any other country in the civilised world; thus, what with a land system of the worst kind, and the general condition of the country, the case of Ireland is surely an exceptional one. All over the Continent of Europe there is more live-stock kept, more capital owned, more produce and income yielded, by small farms than large estates.

XIII.—MR. J. MACDONELL'S SURVEY OF POLITICAL ECONOMY.

(a). The question of large or small farms is not between large and small properties, for large properties do not ensure large farms, but rather between large farms on the one hand, and small farms and peasant properties on the other; the real antagonism is between *extensive* and *intensive* culture; any other contrast is apt to be a false one. The

Romans were acquainted with the subject, for the contrast between Latium, densely peopled under a *régime* of small farmers, and depopulated under that which succeeded it, could not fail to strike them, and Pliny has embalmed his opinion of the change in the memorable phrase "large farms ruined Italy."

(b). In this country the subject has called forth swarms of books and pamphlets since the days of Arthur Young; and no continental economist thinks that he has done his duty until he has returned a verdict for *la petite culture*, or *la grande culture*. The controversy has been barren and profitless, the discrepancies of opinion needlessly great, because the two litigants have employed entirely different tests of what is right and proper. There are three questions to be considered: What is ideally the best economical state for the present; what is the best economical state practicable; and what is the best state morally. And these three have been confounded.

(c). If purely present economical considerations are in view, and if the question be asked which of the two systems now produces the greatest results with the least expenditure of labour, political economy has said the last word, and the advantage of large farming over small farming ought long ago to have been acknowledged. For, in the first place, division of labour is possible to any extent only in the former; and though division of labour is not so profitable or practicable on a farm as in a manufactory, the principle does not fail in the former: it only does not succeed so well as in the latter. In the next place, production on a large scale in farming is more economical, just as in manufacturing, though the advantages are not so great in the one as in the other; there is a saving in management, in fences, in buildings, &c. * *

(d). And as to the argument so much insisted on by Mr. Mill and the advocates of small farmers in general, that they will expend almost "super-human industry" on the land—which is, of course, true only where they are the proprietors—it must be remembered that every increase of produce is obtained by a more than proportional¹ increase of labour; that is to say, that after a certain point, doubling the labour will not double the produce, but perhaps may increase it merely one-fourth or one-eighth. Consequently, *intensive* culture is a comparative waste of labour, so long as *extensive* culture is possible.

(e). And therefore, if purely economical considerations, having regard only to the immediate present, are to guide us, we should defer cultivating all Europe as Belgium is cultivated, until all Europe is peopled as Belgium. Until that period comes, labour so expended will be mispent, in an economical point of view, for it might have been expended elsewhere to more advantage.

(f). But it is not enough to know which system will yield the greatest net produce with the least expense. That is not decisive of the whole merits of the two systems; a further and equally important question lies behind—under which system will the best race of men be bred and live? Under which will the average standard of morality, comfort, and happiness

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¹ But it is the extra labour of one who cheerfully bestows it on the property which gives him meat and drink, and who would not bestow it for wages on the large farm system. The peasant property is a savings bank for extra labour which that property calls forth, and which nothing else can elicit.

APP.
XXIV.GENERAL
OBSERVATIONS.MR. J. MACDO-
NELL.

Para 2, contd.

be highest? And the advocates of *la petite culture* rest their case on a more solid basis when they assert that small farmers, whenever they have owned the land they farmed, have been marked by sobriety of life, prudence, and all the work-a-day virtues, and that they have been the stablest pillars of support to those nations whose good fortune it has been to possess them. Property, as has been already observed, has a humanising effect; until men have acquired some property, they are not tamed or domesticated; and real civilisation grows as the number of those destitute of it decrease. It is not, therefore, a meaningless coincidence that those countries in which peasant proprietors have been most numerous have been the chosen abodes of patriotism. Neibuhr (quoted by Mr. Mill) says: "Wherever you find hereditary farmers or small proprietors, there you find order and honesty," and with similarity of language as well as of opinion, Sismondi has observed: "Wherever are found peasant proprietors are also found that ease, that security, that independence, that confidence in the future, which assure at the same time happiness and virtue." The manly worth of the "statesman" of England is not wholly a figment of poetry or an invention of romance. Slow to change, those small proprietors have often been the saviours of order. When all else has rocked in France, they have sometimes been immobile; and now, as the enemies of revolution avow, the greatest security against its repetition is the existence of a vast legion of peasant proprietors interested in the preservation of order. Plant the argument for small proprietors on these moral grounds,—say that a long review of history, and a broad survey of many countries, attest that peasant proprietors have displayed singular worth of character, and that, on the other hand, large farming brings as an accompaniment a population such as the hinds of England, rude, unthinking, and ignorant—and the argument is not easily to be shaken; but do not say that small farming is, in a theoretical point of view, the best system; do not say that general want of capital, general isolation, general inability to try new methods, no division of employment, and a system which produces large results only when a man considers his labour and time of little worth, are the conditions in which the utmost wealth is at present produced with the least possible expenditure of labour.

(g). These favourable opinions of the salutary effects of small farms on the general morals of the people, do not hold good when the small farmers do not possess the land they till; or hold it by a fixed tenure or for a long term of years; for experience and presumption alike assert that the cottier system of cultivation is morally and economically the worst that circumstances or man could devise. There the fate of the farmer is to scrape painfully together the means of a miserable livelihood, to slide into debt, penury, disaffection, and in the end perhaps into crime; and Ireland is a grand illustration and warning of the consequences of such a system long and generally pursued. It is true that the dense population of Ireland has intensified the evils that are to be ascribed to the system, and that several provinces of Belgium—the famous Pays de Waes, for example—attest that, among a people well educated and accustomed to a comfortable style of living, and a standard set by neighbouring small proprietors, the cottier system may be productive of and certainly accompanied by, comfort. But it can rarely happen,

at all events where the land is let by competition, that the cottier's lot can be other than hard, barren of enjoyment and of hope.

(k). Though large farms are abstractedly considered the best economical state, it does not follow that they should be universally adopted in preference to small farms, seeing the fate of the bulk of the population may be worse under the former than the latter. And I shall now point out a few other considerations which should cause hesitation in recommending a universal spread of large farms.

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—
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—
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—
Para. 2, contd.

(i). Much heed and respect should be paid to the custom of any country, for if the custom has grown up spontaneously and has not been imposed by force, it is almost certain that it is well suited to the district and character of the people. * * These customs are the growth of the wants of the people, the slow and silent creation of experience, and they are not to be eradicated swiftly and without injury. And we shall generally find, on close examination of agricultural systems widely different from ours, that there is some good reason for the difference, and that a sweeping condemnation can come only from those who are ignorant of the circumstances. Take France, for example. An Englishman or Scotchman almost irresistibly infers, when he knows that there are twenty millions, out of a population of thirty-eight, engaged in agriculture, that the proportion is outrageously great, and that there is no reason in the world save stupidity and prejudice why the proportion of the agricultural population to the commercial and industrial should not instantly be altered to one-fourth or one-fifth, as in England. But examine the products of the country, and the hasty conclusion is recalled. As M. Léonce de Lavergne, an unimpeachable witness, points out, much of the land in France and the products are such as to require a far greater amount of manual labour than in England; pasture is not so good there as here; the products are more varied, and some of them—such as the vine and olive—require all the attention a gardener gives to a delicate exotic.

XIV.—PROFESSOR J. E. CAIRNES (*Political Essays*).

(a). It would seem that, in the progress of nations from barbarism to civilization, there is a point at which the bulk of the people pass naturally into the peasant-proprietor condition. In the work just referred to, this transition has been traced in the industrial history of the Jews, Romans, and Greeks amongst ancient nations, and amongst moderns in that of the leading nations of Western Europe; and it has been shown with abundant and interesting illustration that the *régime* of peasant properties has been constantly coincident with great physical comfort amongst the masses of the people. As Mr. Thornton observes, it was after peasant proprietorship had existed for five hundred years in Judea, that David declared he had "never seen the righteous forsaken, nor his seed begging bread"; while, on the other hand, it was not till, under the later kings—when men had begun "to lay field to field till there was no place, that they might be placed alone in the midst of the earth,"—that pauperism became a constant and increasing evil among the Jews. The notion of every man "dwelling under his own vine and fig tree" was the traditional Jewish ideal of national happiness. In Roman history, to borrow another example from Mr.

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CANNES.

Para. 2, contd.

Thornton, though debt and poverty were never rare amongst the plebeians, pauperism as a normal phenomenon, paupers as a distinct class, did not make their appearance till towards the seventh century of the city, when the small peasant estates of the Roman commons had been consolidated into the enormous grazing farms cultivated by slaves, which were the characteristic feature of the later Roman agriculture. From being the scene of a thriving rustic population, each man the owner of his farm of some ten or twelve acres, Italy became a country of immense estates of absentee proprietors worked by slave-gangs; while the population, which had in the early time sustained itself by industry, crowded into the cities, and chiefly to Rome, where they became the formidable rabble whom it was found necessary to support by regular largesses of corn. The connection between pauperism and consolidation did not escape the patriots of the time. It is a noteworthy fact that the practice of largesses was introduced by the same men who were also the agitators for the distribution of the public lands.

(b). To give one example more: English history illustrates the same tendency to peasant proprietorship at a certain stage of a nation's growth, and not less decisively the social value of that economy. The period when it had attained its greatest development in England seems to have been about the end of the fifteenth century, by which time the condition of villenage had very generally passed into that of copyhold tenure, while that tendency to a consolidation of estates and holdings, which marked the epoch of Elizabeth had not yet commenced. To what extent the system then actually prevailed, there is not perhaps any distinct evidence to show; but two centuries later, when considerable progress had been made in the consolidation of farms, the authorities, on whom Lord Macaulay relies, speak of not less than 160,000 proprietors as existing in England, forming with their families not less than a seventh of the whole population, who derived their subsistence from little freehold estates. "These petty proprietors," says the historian, "an eminently manly and true-hearted race, cultivated their own fields with their own hands, and enjoyed a modest competence, without affecting to have scutcheons and crests, or aspiring to sit on the bench of justice."

Of the remarkable prosperity enjoyed by the rural population of England when peasant proprietorship formed the prevailing tenure—that is to say, in the latter half of the fifteenth century,—the evidence adduced by Mr. Thornton is copious and striking, and to my mind conclusive; nor is it the less instructive when contrasted with the fact that the movement towards consolidation, which followed the period in question, was attended with an extraordinary increase of pauperism, resulting, as is well known, in the passing of the first English Poor Law. These examples might easily be multiplied; but enough has probably been said to illustrate, if not to substantiate, our position, that in the progress of nations from barbarism to civilization the condition of peasant proprietorship naturally arises, and that the period when it has prevailed has always been conspicuous for human well-being. Now, into this phase of industrial existence, the Irish people have never passed. The fact, as it seems to me, is one intimately connected with their present condition and character.

APPENDIX XXV.

INCIDENTS OF PEASANT PROPRIETORSHIP IN EUROPE.

The extracts in this Appendix are from the same sources APP. XXV. as those in the preceding Appendix. Among the incidents of peasant proprietorship, though not peculiar to them, may be classed the laws of inheritance.

—
LAW OF
INHERITANCE.

I.—HAMBURGH AND LUBECK.

Where neither father nor mother has bequeathed the property to any one son, the eldest son takes it at a prescribed valuation, and pays the value of their respective shares to his brothers and sisters.

II.—GREECE.

In case of intestacy, real property, on the death of the owner, is equally divided among the children, or nearest relatives. When there is a will, the testator can only reserve for his disposal a share of the estate equivalent to that which, after an equal division, descends by right to each of his direct heirs. No distinction is made between males and females; but, generally speaking, when feasible, a female is indemnified for her share of the land by being paid the money value of it, or by holding a mortgage of proportionate value on the whole of the estate.

III.—FRANCE.

Article 745 of the "Code Napoléon" provides for the equal distribution of the property of the deceased among his children, without distinction of age or sex. In default of children, the succession reverts to the brothers, sisters, and their children, in portions defined by the law; and in default of the collateral branches, to relations as far as the twelfth degree, where the law of succession stops. Article 756 provides for natural children, and Article 767 for the wife (in case of no succession) and for the rights of the State.

A testator, however, is not obliged to leave his successors the whole of his fortune. He can, if he so wishes, bequeath to whomsoever he may appoint one-fourth if he has three children, one-third if he has two children or their descendants, and one-half if he has only one child. If he has relations on both the father's and the mother's side, he cannot alienate more than one-third; if on one side only, he can dispose of three-fourths.

IV.—WURTEMBERG.

The land of the peasant cultivator is, after the death of the owner, if intestate, equally divided amongst his children, male and female, according to law. When, in accordance with the will of the father, one child becomes owner of all the paternal land, an estimate is made on a footing

APP. XXV. rather favourable to him (a so-called "Freundeskauf"), and he compensates the brothers and sisters by equal sums of money. The daughters, however, are more frequently, on their marriage, allotted an equal share of lands; and as the husband is probably proprietor of a piece of land elsewhere in the Commune, the intersection and sub-division of the land goes on increasing. No limitation exists among the peasant cultivators, either by law or custom, to the division of property.

—
LAW OF
INHERITANCE.

—
Para. 1, contd

The larger peasant farms are not entailed; and since the freedom of proprietorship measure was passed, the law does not stand in the way of their sale or sub-division; but according to custom, the eldest son (in some parts of the country, though, the youngest) succeeds to the whole property, often in the father's lifetime. When the parent is incapacitated by age from managing his farm, he retires to a small cottage, generally on the property, and receives from the son in possession contributions towards his support both in money and in kind. The other children receive a sum of money calculated according to the size of the property and the number of children, but which, in any case, falls short of the sum which they would receive were the property equally divided, or even were the law of "pflicht theil" acted on. They have, however, their home there until they establish themselves independently, or take service on another property. * * Though all rests purely on custom, there is seldom, if ever, any dispute as to succession; and though the written law provides that all properties should, on the death of the owner, be divided amongst his children, the above custom has become so time-honoured that it would be respected by the Law Courts, and not interfered with.

V.—ITALY.

The present law which regulates the descent and division of landed property establishes, when there is no will, an equal division amongst the children, without reference to sex. A landlord having children may dispose, by will, of one-half of his property; any amount, however, which during his life he may have alienated by deed of gift, either to a stranger or indirectly to a child, is reckoned as portion of the half of which he may dispose; the remaining half must be divided equally amongst the children; if he has no children or parents living, he may bequeath his property as he chooses; if parents living, one-third is reserved, the other two-thirds being free.

VI.—BELGIUM.

The principle of the division of property, as settled by law, is equality amongst all legal heirs called to take part in the succession; the principle is carried to such an extent that an heir must restore to the estate anything he may have received by deed or gift, either directly or indirectly. * * Real and personal estates are alike divided equally.

VII.—PORTUGAL.

Where the owner dies intestate, or where, having made a will, the will is annulled or becomes void, the estate descends to his lawful heirs, in the following order:—(1) lineal descendants; (2) lineal ancestors;

- (3) brothers and sisters, and their issues; (4) surviving husband or wife; (5) collaterals not included in No. 3, to the tenth degree; (6) the State.

Relatives in the same degree take equal shares of the inheritance, without respect of sexes; and a relative in a nearer degree excludes a relative in a more remote degree.

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—
Para. 1, contd.

Where the owner dies having made a will, and having lineal descendants or lineal ancestors, two-thirds of the estate descend absolutely to his lawful heirs, as the whole would have done if he had died intestate, and in the same order; as does also such portion of the remaining third as may not have been disposed of by will by the owner, in accordance with his legal right so to dispose of this third.

VIII.—DENMARK.

(a). A testator may, in general, dispose of one-third of his entire property, real or personal, the remainder being of necessity distributed in equal portions to the heirs, male and female, of his body. This rule secures to each heir two-thirds, for certain, of the lot due to him as *ab intestato*, the division, where there is no will, being in equal shares. If the Danish law has done so much for the creation of peasant freeholds, it has also recognised as a desirable object that large estates be kept in single hands, and in the families of their original possessors. The owner of an untailed "Sødegård" may leave half his property to any one of his heirs, in which case he can freely dispose of one-fourth (instead of one-third) of the rest of his estate, the remaining three-fourths following the common rule of inheritance. But the favoured heir must, nevertheless, give the other claimants compensation for their shares reckoned on the usual foot. Again, if the proprietor of a "Sødegård" die intestate, the sons may reserve his real estate on condition that they give their sisters, if any, full money compensation for the land of which the brothers have deprived them.

(b). The owner of a freehold "Bondergaard," be he of the peasant class or not, may leave his property according to a special set of rules, from which I extract the chief circumstances. These are—

(1). If a "Bonde" have no heirs of his body, he may leave his estate, (animals, tools, &c., inclusive) away as he pleases.

(2). He may leave all to any one of his heirs, without restriction as to sex.

(3). He may fix the compensation to be given by the favoured individual to the deprived heirs.

(4). A testator who favours a single heir (rule 2) can only bequeath *ad libitum* one-eighth of his entire property, real estate included.

(5). The owner of two or more farms may not make a cumulative bequest.

IX.—PRUSSIA.

The common law requires that parents should leave their children a fixed quota of their property, and that children who die without descendants should likewise leave their parents a fixed quota of their property. The mere fact of a will not recognising such natural heirs does not now invalidate it, neither does it matter, if the will recognise them, out of

APP. XXV. what property or in what manner their shares are bequeathed. But if the will do not recognise them, then the testator's estate is considered to be intestate to the amount of the obligatory shares; or, in other words, the natural heirs are regarded as heirs *ab intestato* to that amount. Justinian introduced the principle of increasing the aggregate of obligatory heritages according to the number of children. He established two proportions of that aggregate, one-third and one-half. The Prussian law adopts the principle and increases the proportion to three. It fixes one-third for one or two children, one-half for three or four children, and two-thirds for more than four children. But these ratios are not calculated on the whole inheritance; they are calculated on the portions which each child would *ab intestato* have inherited. In each case the aggregate is equally divided. * * *

LAW OF
INHERITANCE.

Para. 1, contd.

Every one can make a will and dispose as he likes of his property, except of the quantity required to satisfy the claims of the natural heirs ("Notherben"), and of the property entailed or settled, either in *jidei commissa*, or in accordance with the laws of feudal or similar descent.

In cases of intestacy, the law divides all property, including land, in certain proportions, amongst widow and children, or equally amongst the children, if there be no widow. But the laws of intestacy seem to have little application, for the custom of making a will is almost universal.

Sub-division of
peasant prop-
ties.

2. The effects of the laws of inheritance upon the sub-division of property are seen in the following extracts:—

I.—BELGIUM (*Mr. Wyndham*).

When real property of a deceased land-owner cannot conveniently be divided, it is sold, and the proceeds are divided amongst the heirs; but a sale must only be resorted to if division of a property is almost impossible. The object of this is to prevent the accumulation of landed property. This system was introduced into Belgium at the time of the French Revolution. Although the law tends to diminish the number of large farms, there are, nevertheless, still a certain number, owing either to some wealthy persons having succeeded in keeping their properties together, or by their buying many properties; or owing to farmers leasing lands from different owners, and uniting them into large farms. In some localities it is the interest of the owner to let his land to a farmer who already cultivates land belonging to other owners; while in other localities it is his interest to lease it to a small farmer. With regard to the division of landed property, it should be borne in mind that the partition of the land itself is not obligatory, provided those interested can come to an arrangement to make up the various equal shares from other property.

II.—BELGIUM (*Mr. Grattan*).

After remarking that the more land is sub-divided the more populous it becomes, Van Aelbroeck says: "If it is true that the land which is the most densely peopled is the most valuable to the State, it certainly

also follows that the small cultivators are the most profitable to both the State and the land." "So convinced are people in Flanders," he further says, "of the advantages of small holdings, that large farms are frequently divided and converted into small ones. A part, or all the buildings, are removed, and the lands are let to various small agricultural districts. The landlord incurs less outlay for the repair of buildings, and obtains a higher rent for his land." Another practical advantage of the system of small holdings, which results from the extreme sub-division of land in this country, is the facility it affords to a large number of persons, artisans, small traders, and others, to purchase or occupy land in the vicinity of towns or villages, by which means they are enabled to produce potatoes and other vegetables for domestic use, and to the great benefit of themselves and their families. The possession of a patch of land, however small, not only contributes to their comfort, but creates a feeling of pride and independence which re-acts favourably upon the character and conduct of the possessor.

SUB-DIVISION
OF PEASANT
PROPRIETIES.

Para. 2, contd.

III.—M. DE LAVELEYE.

Although the population of Flanders is twice as dense as that of Ireland, a Flemish peasant would never think of dividing the farm he cultivates among his children; and the idea of allowing a stranger to settle and build a house on it, would appear altogether monstrous to him. On the contrary, he will submit to extraordinary sacrifices to give his farm the size and typical shape it should have.

IV.—MR. S. LAING (*Observations in Europe, 1850*).

(1). Why is not the land here, in Flanders, or in Switzerland, or in Norway, frittered down, as in Ireland, into portions too small to afford a civilized subsistence to the cultivators? The land is occupied, as in Ireland, in small, not in large, farms. The natural affection for offspring and near relations is not less strong among the people of those countries, and the division of the land among the children of the proprietor is favoured by law, and compulsory, as a provision for them on the parent's death. Why, then, do we not find in those countries in which small farms are of old standing in very extensive districts, a division and sub-division of the land, or its products, as in Ireland, down to half a potatoe-bed, or a half diet of potatoes twice a day? The reason seems to be that the powerful influence on mind and conduct, which may be called the sense of property, is an effective check, in general, upon improvident marriages among the class of peasant proprietors, and upon wasteful habits and indolence in acquiring property to add to what they possess. The small tenant farmers or cottier population of Ireland have no such check, having no land of their own to raise and foster this sense of property in their social condition.

(2). There is also in those countries an element of aggregation, as well as one of division and sub-division at work in society and acting on property. In Ireland it is the divisive element only that is at work, the aggregative element is wanting. The occupants of the 562,000 small farms in Ireland, the two millions eight hundred thousand people living

APP. XXV. on them, are tenants, not proprietors. They cannot acquire by marriage, inheritance, or purchase from each other, any addition to the small lots of land they occupy at yearly rents as tenants, although they cannot be prevented from dividing and sub-dividing their small lots, or, what in social effect is the same, the subsistence produced from them, according to the dictates of natural affection. In the other countries occupied by small farmers holding lots of land of similar extent, the small farmers are the owners, and not merely the tenants, of the land they occupy. This class is numerous, and possesses a great proportion of all the land of those countries. The aggregation, consequently, of land into larger lots by marriages, inheritance from collateral relations, and by sale and purchase among themselves of lots of land too small to employ and subsist the heirs in the way they have been accustomed to live, is going on naturally every day as well as the division and sub-division among the children by the deaths of the parents. Over the whole of a country and population, this element of aggregation, which is totally wanting in the social condition and state of landed property in Ireland, must in the natural course of things equal the element of decrease, and counterbalance its tendency. In a former work on the social state of Norway, where the occupation of the land by peasant proprietors has been for many ages in the fullest development, I have endeavoured to explain, on this principle, the fact that, notwithstanding the equal inheritance of all the children of the parent proprietor, the land is not divided and sub-divided into portions too small to subsist the occupant; that society is not reduced to the state of the Irish peasantry; and that the equal division among the children is counteracted by the succession of heirs to collateral relations, by marriages and by purchase. There is practically no division of the land itself in those countries, like that which takes place in the tenant occupancies in Ireland. The actual division of the land itself into lots too small to afford employment and subsistence according to a certain conventional standard, rarely takes place in those countries in which the social arrangement of the small ownership of land has been long established. The price of the lot is of more value to the heir than the land itself, if it be too small to support him in the way customary in his class, and he sells it to some co-heir or neighbour, who has horses and stock to cultivate it and append it to his own land, and the heir with his little capital turns to some other means of subsistence.

(3). There is a strong conservative principle, also, in the social condition of a body of small land-owners of old standing, which cannot exist in a body of small tenants removable at each term, and with no right of property in their farms. The owner of six acres of land is under the same moral influence as the owner of six hundred. He has a social position to maintain; a feeling of being obliged to live as respectably as his equals; a customary standard in his house, furniture, clothing, food, to support; a repugnance to derogate from what ancient custom has established as suitable in his station, and an equal repugnance to be thought imprudent or extravagant by exceeding it. There are few positions in life in which men live under such powerful social restraints, as in the class of peasant proprietors. Their houses, furniture, clothing, diet, utensils, and even modes of working, are fixed and regulated by

—
SUB-DIVISION
OF PEASANT
PROPERTIES.

Para. 2, contd.

ancient custom, from which no individual can deviate without in a manner APP. XXV.
losing caste.

CONSERVATIVE
TENDENCY OF
PEASANT PRO-
PRIETORSHIP.

Para. 3.

V.—PROFESSOR CLIFFE LESLIE (1868).

The main object of the migration of the Creusois to Paris was more-over to accumulate enough to spend his last years in a cottage, and with a small farm of his own. "These village youths," says M. de Lavergne, "all sought to become proprietors like their fathers, and the money obtained by this migration went entirely in the purchase of the land. The last residue of the large domains was thus more and more cut into shreds." He adds, it is true, that the small estate of the peasant was itself frequently sub-divided by succession; legal expenses and mortgages too often swallowed up the best part of its scanty produce; and after all their efforts, not a few saw the land so dearly acquired escape at the last from their hands. But all these evils would have rapidly disappeared before an improvement in cultivation and a rise in the price of its produce; for it is observed throughout France that the sub-division of peasant properties among children, by succession, diminishes instead of increasing as the owners themselves increase in prosperity.

3. The conservative tendency of peasant proprietorship is noticed in the following extracts:—

Conservative
tendency of
peasant proprie-
torship.

I.—HAMBURGH.

The small proprietors are a slow-thinking race of people, troubling themselves little about politics, and disliking changes of any description. The neighbourhood of the city, however, and the new socialistic theories, with which the heads of all classes of workmen have of late years been filled, have not been without their influence upon the labouring men in the agricultural districts.

II.—SAXE COBURG GOTHA.—See GENERAL OBSERVATIONS in Appendix XXIV, para. 2, section VII.

III.—FRANCE.

There is another advantage attributed to the division of property, and to the existence in a country of a number of small proprietors. It is said that such a condition of property conduces to political as well as social order, because the greater the number of proprietors, the greater is the guarantee for the respect of property, and the less likely are the masses to nourish revolutionary and subversive designs.

IV.—M. DE LAVELEYE.

Travelling in Andalusia this year (1869), I lighted upon peasants harvesting the crops on the lands of Spanish grandees, which they had shared among themselves. "Why," said they, "should these large estates remain almost uncultivated in the hands of people who have neither created nor improved them, but are ruining them by spending

APP. XXV. elsewhere the net produce they yield?" I am convinced that were land more divided in those districts of Andalusia, where ideas of communism prevail at the present day, these would no longer find any adherents. In Belgium, socialism, though spreading among the working classes in manufacturing districts, does not penetrate into the country, where the small land-owners block up its way.

CONSERVATIVE
TENDENCY OF
PEASANT PRO-
PRIETORSHIP.

Para. 3, contd.

Therefore, I think the following propositions may be laid down as self-evident truths. There are no measures more conservative, or more conducive to the maintenance of order in society, than those which facilitate the acquirement of property in land by those who cultivate it; there are none fraught with more danger for the future than those which concentrate the ownership of the soil in the hands of a small number of families.

Checks upon
over-population.

4. The restraining influence of peasant proprietorship upon the growth of population is indicated in the following extracts :—

I.—SCHLESWIG HOLSTEIN.

Among the tenants who hold small farms in the villages, the population increases more rapidly than among the independent peasantry, which may be taken as a sign that the former class of persons is the richer of the two. * * The population of the agricultural districts is, as already mentioned, on the increase, especially in those villages where the land is farmed by good tenants. The increase is not so rapid as in the manufacturing towns; but the Duchies are essentially an agricultural country, and the inhabitants of the few towns which they comprise, such as Altona, Kiel, Flensburg, and Neumunster, bear but a small proportion to the mass of the population.

II.—FRANCE.

(a). The annual average rate of increase of the population in France has been less than in any other State of Europe. Official statistics show that during a period of twenty-four years, 1836—61, the rural population has undergone a diminution of 1·8 per cent., while that of the towns has constantly increased. In 1846 the proportion of the rural population was 75·78 per cent., and that of the urban 24·22 per cent., and this ratio has not greatly varied since. The decrease in the number of children in the families of the peasantry is a fact fully established by the "Enquête Agricole," and it is generally remarked, by those to whom questions on this subject were put, that there is a progressive tendency to diminution of fecundity in the families of the agricultural population. The labourer who has become a proprietor fears that his plot of land would be too much divided if he had a numerous family. He calculates, also, more than formerly, the expenses which he must incur in bringing up his children, and the uncertainty (should he have them) of their remaining with him, when grown up, to assist him. Where families of seven or eight children were commonly to be met with in France, they now consist of two or three, or, perhaps, only one child. As compared with other countries,

therefore, it may be said that the rural population of France is diminishing; for it is only when taken together with the urban population that even a general rate of increase can at all be established.

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CHECKS
UPON OVER-
POPULATION.

Para. 4, contd.

(b).—PROFESSOR CLIFFE LESLIE (1866).

The rural population of France is now scarcely greater than it was at the beginning of the century, while the urban population has increased from six millions to sixteen; and of the numbers enumerated as belonging to the country, no small part now consists of an element infected with the vices of the camp and city

(through the conscription).

III.—WURTEMBERG (*Mr. Phipps, 26th November 1869*).

The communal regulations, which in a country of small proprietors cannot be considered otherwise than as excellent, are intended to prevent marriage, except under certain restrictions, to act as a bar to an excessive augmentation of the agricultural population, and prevent the land being crowded by more human beings than are necessary to cultivate it, or than it can fairly support. The laws imposing restrictions on marriage are, however, now carried out with great lenity, in consequence of the opposition they have met with in the country, and they are about to be entirely abolished. It is probable, though, that their very existence may have had some effect on the tide of yearly emigration, and may account for the fact of the majority of the emigrants being unmarried.

IV.—BELGIUM (*Mr. Wyndham, December 1869*).

The census of 1856 shows a diminution in the agricultural population of 21,846; this small decrease, hardly worth notice, is attributed to the increased use of machinery in agriculture, and to the attraction of superior profits which the labourer can obtain in mining and industrial occupation. In some of the late commercial reports which I have examined I have found, and in parts of the country which I have visited I have heard, complaints of the present and increasing difficulty of obtaining farm labourers.

V.—PRUSSIA.

As to relative increase of population, the small and middle proprietors very rarely marry early. On the whole, they seldom marry before 30 years of age, whereas the unlanded labourer marries on the average at 20 years. The family of a small or middle proprietor (under 100 acres) often consists of two children. In many (I believe in most, if not all) agricultural districts of small and middle proprietors the persons under 16 years and above 16 years are equal in number. The population is frequently stationary as soon as the land is owned by as many families as it will support. The fact of the facility for owning or leasing land, as the case may be, has usually a similar influence on the labourer. The proprietary labourer is usually as prudent as the small independent proprietor. The difference in these respects between the manufacturing labourers and the lower agricultural classes is everywhere most marked.

APP. XXV. * * Marriages among the peasant proprietors, who are not day-labourers, display generally the usual prudence and forecast, and take place, as an average, late. But the contrary is unhappily, for them, the case amongst the day labourers, who exist mainly by labour. They marry lightly, and consequently with their families become, not unfrequently, charges for the winter upon the poor funds. This cause, taken in connection with the estimate before given of their income and outgoings, will fully account for their neediness.

CHIEFS
UPON OVER-
POPULATION.

Para. 4, contd.

VI.—MR. S. LAING'S NOTES OF A TRAVELLER (1842).

(1). This parish of Montreux is one of the best cultivated and most productive vineyards in Europe, and is divided in very small portions among a great body of small proprietors. * * These small proprietors, with their sons and daughters, work on their own land, know exactly what it produces, what it costs them to live, and whether the land can support two families or not. Their standard of living is high, as they are proprietors. They are well lodged, their houses well furnished, and they live well, although they are working men. I lived with one of them two summers successively. This class of the inhabitants would no more think of marrying without means to live in a decent way, than any gentleman's sons or daughters in England; and indeed less, because there is no variety of means of living as in England. It must be altogether out of the land. The class below them, again, the mere labourers or village tradesmen, are under a similar economical restraint, which it is an abuse of words and principles to call moral restraint. The quantity of work which each of the small proprietors must hire is a known and filled up demand, not very variable. * * The number of labourers and tradesmen who can live by the work and custom of the other class, is as fixed and known as the means of living of the land-owners themselves. There is no chance living—no room for an additional house, even for this class, because the land is too valuable and too minutely divided to be planted with a labourer's house, if his labour be not necessary. All that is wanted is supplied; and until a vacancy naturally opens, in which a labourer and his wife could find work and house-room, he cannot marry. The economical restraint is thus quite as strong among the labourers as among the class of proprietors. Their standard of living, also, is necessarily raised by living and working all day along with a higher class. They are clad as well, females and males, as the peasant proprietors. The costume of the canton is used by all. This very parish might be cited as an instance of the restraining powers of property, and of the habits, tastes, and standard of living which attend a wide diffusion of property among a people, on their own over-multiplication. It is a proof that division of property by a law of succession different in principle from the feudal, is the true check upon over-population. * *

(2). Sir Francis d'Ivernois states that at Prælognan, in the States of Sardinia, in which a premium and even a pension is paid to fathers of families who have above 12 children, upon the exploded idea that the number of the population form the strength of the State, the young men had voluntarily entered into a secret association, binding themselves not to marry before 28 years of age, in consequence of the misery

they saw produced in their valley by over-population. They show intelligence in this resolution; but no such association would be necessary in any community in which property was attainable by industry; for in few situations can or does the labouring man, if he is in the way of earning anything by his labour, think of marrying at an earlier age than 28 or 30. It is only in Ireland, or in Sardinia, that the peasant sees no prospect of being better off at 28 or 30 years of age than at 18; and therefore, very naturally and very properly, marries at 18, or very early in life, so as to have a prospect of children grown up before he is past the age to work for them, and who will be able to work for themselves, and perhaps for him, when he is worn out.

APP. XXV.
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CHECKS
UPON OVER-
POPULATION.
Para. 4, contd.

VII.—MR. J. S. MILL (*Principles of Political Economy, Book II, Chapter VII*).

Whether the labouring people live by land or by wages, they have always hitherto multiplied up to the limit set by their habitual standard of comfort. When that standard was low, not exceeding a scanty subsistence, the size of properties as well as the rate of wages has been kept down to what would barely support life. Extremely low ideas of what is necessary for subsistence, are perfectly compatible with peasant properties, and of a people who have always been used to poverty, and habit has reconciled them to it, there will be over-population, and excessive sub-division of land. But this is not to the purpose. The true question is, supposing a peasantry to possess land not insufficient, but sufficient, for their comfortable support, are they more or less likely to fall from this state of comfort, through improvident multiplication, than if they were living in an equally comfortable manner as hired labourers? All *à priori* considerations are in favour of their being less likely. The dependence of wages on population is a matter of speculation and discussion. That wages would fall if population were much increased, is often a matter of real doubt, and always a thing which requires some exercise of the thinking faculty for its intelligent recognition. But every peasant can satisfy himself from evidence which he can fully appreciate, whether his piece of land can be made to support several families in the same comfort in which it supports one. Few people like to leave their children a worse lot in life than their own. The parent who has land to leave is perfectly able to judge whether the children can live upon it or not; but people who are supported by wages, see no reason why their sons should be unable to support themselves in the same way, and trust accordingly to chance. "In husbandry," says Mr. Laing, "the labour to be done, the subsistence that labour will produce out of his portion of land, are seen and known elements in a man's calculation upon his means of subsistence. Can his square of land, or can it not, subsist a family; can he marry or not,—are questions which every man having land can answer without delay, doubt, or speculation. It is the depending on chance, where judgment has nothing clearly set before it, that causes reckless, improvident marriages in the lower as in the higher classes, and produces among us the evils of over-population, and chance necessarily enters into every man's calculations, when certainty is removed altogether, as it is where certain

APP. XXV. subsistence is, by our distribution of property, the lot of but a small portion instead of about two-thirds of the people.

CHECKS
UPON OVER-
POPULATION.

Para. 4, contd.

There never has been a writer more keenly sensible of the evils brought upon the labouring classes by excess of population, than Sismondi, and this is one of the grounds of his earnest advocacy of peasant properties. He had ample opportunity, in more countries than one, for judging of their effect on population. Let us see his testimony: "In the countries in which cultivation by small proprietors still continues, population increases regularly and rapidly until it has attained its natural limits. * * A just family pride, common to the peasant and to the nobleman, makes him abstain from summoning into life children for whom he cannot properly provide.

Mr. Mill cites the similar testimony of Mr. Laing respecting Norway, Mr. Kay respecting Switzerland and Prussia, M. Fauche respecting Flanders, and adds that the experience which most decidedly contradicts the asserted tendency of peasant proprietorship to produce an excess of population is that of France.

Growth of towns.

5. The growth of towns is promoted by peasant proprietorship.

TOWNS AND MARKETS.

I.—PROFESSOR CLIFFE LESLIE (1867).

(a). It has been pointed out by Adam Smith that whatever progress was made by England in rural industry itself, originated in the trade and freer institutions of its towns. In common with other philosophers, he has also remarked that in every part of Europe wealth and civilisation began upon the border of the sea, where there was comparatively free and easy communication with the outer world; but in Ireland the English seized every important port. * *

(b). But England, at least, *had* towns to receive and employ its landless population, while Ireland was without them. And thus, while the chief movement of population in England has been a migration from the country to large towns, in Ireland the chief movement has been emigration to the towns of England and America. This emigration of the rural population of Ireland to America is no new phenomenon of this century; it was the subject of treatises more than a century ago. "What was it," says a writer of 1729, "induced so many of the commonality lately to go to America but high rents, bad seasons, and want of good tenures, or a permanent property in their lands? This kept them poor and low, that they scarce had sufficient credit to procure necessaries to subsist, or till their ground. They never had anything in store; all was from hand to mouth, so one or two bad crops broke them.

(c). It is not only to the maintenance of a rural population in Ireland, however, that just measures respecting the ownership and tenure of land would conduce; they would tend, likewise, to augment the home demand for labour in towns, to find new employments for capital, and to open a new sphere for manufactures and trade. For, in the natural progress of industry and opulence, as Adam Smith has clearly explained,

towns, manufactures, and a brisk and flourishing home trade are the natural consequences of rural prosperity, because agriculture, after providing for the first wants of existence, creates both a demand for higher things and the materials and subsistence of those who supply it. This is especially true of a country like Ireland, where the bulk of the population is dependent on agriculture, and must furnish the consumption upon which home trade depends. * *

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GROWN-ON
TOWNS.

PAG. 5, contd.

(d). In the north-east of Ireland, the country towns are rapidly increasing in population and wealth, because country and town re-act on each other, and the rural wealth—created by town consumption of food and town markets for flax—finds its way back to the factory and shop. In the south and west, on the contrary, the country towns are, in general, decaying, because the rural population is poor and declining, and the peasant must be content with home-made flannel and friezes.

(e). Mr. Mill observed that a country will seldom have a productive agriculture “unless it has a large unagricultural population, which will generally be collected in towns and large villages, or unless it has the only available substitute, a large export trade in agricultural produce to supply a population elsewhere.” We do not dispute the justice of this remark, but add to it Adam Smith’s observation, that where cultivation is carried on with proper security to cultivators, it creates for itself a large non-agricultural population around it. This is most happily confirmed in the case of Flanders. Its “innumerable villages,” and the industry of the non-agricultural population they contain, are beyond question the direct offspring of agriculture, the ministers and creatures of the cultivators. * * If any one examines the tables of occupation in the census, he will see that the great majority of the non-agricultural population of Flanders is engaged in operations arising directly out of agriculture, *viz.*, either in furnishing it with what Dr. Chalmers calls its “secondaries,” that is to say, its implements, clothing, and other requirements, or in the preparation for use and the carriage and distribution of its principal produce, animals, milk, butter, flax, hemp, tobacco, hops, beet-root for sugar, oil plants, and grain. One little item of Flemish commerce is significant. The children of the peasantry feed rabbits in the manner M. de Laveleye describes, and 1,250,000 skinned rabbits, valued at more than 1,500,000 francs, are annually exported to the London market from Ostend, while the skins are retained in the country for the manufacture of hats. Thus agriculture leads, after Adam Smith’s theory, both to foreign trade and manufactures at home.

(f). The author of the admirable treatise on the “Impediments to the prosperity of Ireland” has pointed out that the prosperity of its agricultural population is important, not only because they are the largest class, but because the prosperity of the largest class in any country is the best foundation for the prosperity of the remainder. “The condition of American tradesmen and servants, when compared with that of the same classes in England, shows how much more the value of this kind of labour depends on the general body of the population than on the expenditure, however lavish, of wealthy landlords, merchants, and manufacturers. This same fact is established by the prosperity of trades which supply common articles of necessary use, and the precarious

APP. XXV. unhealthy state of the trades confined to the production of articles of luxury."

GROWTH OF
TOWNS.

Para. 5, contd.

(g). Comparing the relative public burdens of the country and town, M. de Lavergne finds that in France the former bears three-fourths of the taxation, furnishes three-fourths of the troops, and gets one-third of the expenditure; and dividing, again, the country into regions, it is found that the half in which La Creuse is situated has only one-third of the railways and roads. Again, in one year, of which we have the official statistics,¹ the public expenditure in Paris is set down at upwards of £31,000,000; in La Creuse, at £150,000. Not a regiment is stationed at La Creuse, while its scanty resources and labour are heavily taxed to garrison Paris, as well as to build its new streets.

II.—M. DE LAVELEYE.

One most important fact in considering land systems is that the country itself, and not the town, is naturally the chief market for agricultural produce. It is a great error to suppose that agriculture, in order to thrive, must have a market in great cities for its productions. The cultivators, on the contrary, may constitute a market for themselves. Let them produce plenty of corn, animals of various kinds, milk, butter, cheese, and vegetables, and interchange their produce, and they will be well fed, to begin. But, furthermore, they will have the means of supporting a number of artificers; they may thus be well housed, furnished, and clothed, without any external market. For this, however, they must be proprietors of the soil they cultivate, and have all its fruits for themselves. If they are but tenants, who have a rent to pay and no permanent interest in the soil, they certainly require a market to make money. In a country whose cultivators are all tenants, an external market for their produce is indispensable; it is not so in a country of freeholders; all the latter requires is that agriculture should be carried on with the energy and intelligence which the diffusion of property is sure to arouse in a people.

6.—REGISTRY OF TITLES AND MORTGAGES.

I.—HAMBURGH.

Every landed estate within the Hamburg territory must, according to law, have a page assigned to it in the State Register of mortgages (Hypothekenbuch), on which it stands inscribed in the name of the proprietor, and on which all mortgages are entered in their order, so that the older mortgage takes precedence over those made later. The Register (although entitled the "Hypothekenbuch") is, in fact, one of both sales and mortgages; and only those persons whose names are entered in the register can have any legal rights to the property in question. Whether the sale of an estate is effected by private contract or by public auction, it is not valid until duly inscribed in the State Register.

The cost of registering the sale or mortgage of an estate in the State Register Book is 7 shillings sterling, and if merely a house or

¹ This was written in 1868.

building, 3s. 6d. There is a duty of 2 per cent. on the amount of the purchase-money to be paid to the State by the vendor and purchaser in equal moieties. As no documents are required beyond the registration of the sale or mortgage, no further expenses need be incurred by either party concerned.

APP. XXV.
 REGISTER OF
 TITLES AND
 MORTGAGES.
 Para. 6, contd.

II.—LUBECK.

The rate of interest upon mortgages averages from 4 to 5 per cent. All mortgages are registered in a book kept for the purpose, for which a duty is payable of from one-quarter to one-half per cent. on the value of the property.

III.—SAXE COBURG GOTHA.

The properties of small owners are generally much burdened with mortgages, but there are many exceptions; the usual rate of interest was, until 1866, 4 per cent., but is now $4\frac{1}{2}$ per cent. These mortgages are all legally registered by a Magistrate, and the cost is 2 per cent. on small loans; on larger sums it amounts to $1\frac{1}{2}$, $1\frac{3}{4}$, down to $\frac{1}{2}$ per cent. on the amount of the capital.

The sale, transfer, exchange, or division of property must be transacted legally and entered on the public register. The usual relative cost is little above 1 per cent. of the value of the property.

IV.—FRANCE.

In cases of simple purchase, the Notary prepares the necessary deeds, which are duly signed and attested by the parties interested. The registration fees amount to 5 per cent., and the legal charges to 1 to 2 per cent., and they are paid by the purchaser, unless it is stated otherwise in the contract of sale. The process is simple and expeditious; but, as may be imagined, the expenses are considerable, and doubtless very much impede the sale and transfer of land.

The legal method of registering mortgages is very simple. In every arrondissement a register is kept, in which all mortgages must be entered with full particulars. A government functionary, called "Conservateur des Hypotheques," superintends all matters relating to the registry. The register is public, and the "Conservateur" is obliged to furnish extracts, when required, to any one. The cost of registration for a mortgage averages from 25s. to 35s., and a charge of 10d. a page is made for extracts. The "Conservateurs" are responsible for the correctness of extracts given.

V.—WURTEMBERG.

About forty years ago the whole country was surveyed, and the extent, estimated value, and ownership of every piece of land entered in registers kept at the office of the Mayor or principal official of each commune. Every change of proprietorship, whether caused by sale, exchange, inheritance, or marriage, is entered in the communal register, so that no possible dispute can arise as to title, &c. A duty of 1 per cent. on the value of the property is charged by the State on each occasion on which a fresh entry (owing to change of ownership, &c.) has

APP. XXV. to be made in the register, as well as a registry fee of $\frac{1}{2}$ per cent. charged by the commune. By applying for permission to inspect the communal register, an intending purchaser is enabled to ascertain at a glance the extent and ownership of any piece of land, however small, in the commune, as well as a list of any debts or charges on such property by mortgage, and the purchase or exchange would be completed by the parties appearing before the communal council, by whom the name of the new owner is registered. The validity of a sale of land does not depend on the registry, which is only a measure of administration.

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REGISTRY OF
TITLES AND
MORTGAGES.

Para. 6, contd.

VI.—ITALY.

The sale, transfer, exchange, or division of properties must be registered in the Office of Registry and Stamps; it must also be inscribed in the Register of Mortgages. Every chief town of a province has an office for the registry of mortgages.

VII.—PORTUGAL.

All transmissions of landed property must be registered to have any effect against third persons.

VIII.—NETHERLANDS.

Hence it appears that real property cannot, as by French law, be acquired by the mere process of sale, exchange, &c., but that besides, and in addition to such process, there is required a separate act, namely, an insertion of a copy of the deed of transfer in the public registers. These registers are kept by the custodians of mortgages, and contain all that concerns such matters within the jurisdiction of the district court in which they exercise their functions. Whenever the deed of transfer relates exclusively to the property transferred, it is copied at full length; but when it contains matters having no reference to the property transferred, it is sufficient that an authentic extract be made. A duty of 4 per cent., with an additional fee of 8*cts.*, is levied at the time of registration on all acts of award, sale, resale, transfer, retransfer, and all other civil and judicial acts affecting the transfer of landed property, except acts of exchange, which are liable to a tax of only half that amount, or 2 per cent.

IX.—PRUSSIA.

No mortgage is legally valid until it is entered in a register. The mortgage must be upon a specific estate. The mortgagee must elect, in cases of exchange of parcels of land, whether he will retain his right to the old parcels or pass it to the new parcels. The mortgages rank according to date of entry. The registers are kept by the departmental authorities for privileged estates, and by the lower authorities for other estates. * *

The following are the chief defects in the Prussian mortgage system, at any rate for the changed condition of landed property and of agriculture. It prescribed no sufficient details of the area and other important matters, but required merely the general indications which distinguish the mortgage property from others. This suited the old system, but is useless for small properties.

X.—AUSTRIA.

APP. XXV.

 LOAN BANKS.

 PART. 7

All immoveable properties in Austria, such as estates, houses, &c., are inscribed upon the books of the Public Registration Office; and the legal possession of all such properties, as also of the rights therein vested, can only be secured by the entry in the public register of the names, titles, claims, &c., of the proprietors, usufructuaries, mortgagees, &c. These entries are executed by the Office of the Registrar General, and are conditional upon a judicial decision in favour of the claims entered. This decision is only issued after the deed of sale, transfer, exchange, &c., has been proved, and found by the competent court sufficient to establish the legal claim or title in favour of which it is granted. Without such an appropriate deed or document, no entry can be effected in the public registers.

7. LOAN BANKS, &C.

I.—SAXE COBURG GOTHA.

Loans can be obtained from the Government Fund which furnishes money to an hypothecator. The conditions exact that the property be worth twice as much as the amount of loan, also that independently of the interest, a certain sum be paid towards the gradual diminution of the debts. These loans are generally necessary for the payment of purchase-money, or to satisfy the claims of heirs, or for the payment of debts incurred by former possessors.

II.—WURTEMBERG.

Government affords no special facilities for raising loans upon landed property. There exist, however, several private companies founded for the purpose of enabling proprietors to raise money upon their estates. These do the large business, while small proprietors obtain loans from the District Savings Banks (Oberamts Sparkassen), of which there are a considerable number in the respective districts. These establishments are not under Government control, but they are voluntarily placed under the supervision of the Government, which superintends their working.

Advances are generally made up to half of the value of the property, sometimes up to two-thirds of the value. The rate of interest varies from $4\frac{1}{2}$ to 6 per cent., and the repayment of the loan is very frequently stipulated in annuities extending over twenty to twenty-five years. These institutions do not, as a rule, enquire closely into the objects of the loan, but merely consider the question of the security offered. In general, loans on landed property are made, to a great extent, by private persons who prefer such investments to all others. * *

Upon the crisis in 1841, owing to the extensive executions levied, large sums were lost and capital turned to State securities and industrial undertakings, partly because confidence in the security of the state of agricultural affairs was shaken by the late events, and partly because agriculture, quickly recovering itself, was no longer in want of such loans; and, on the contrary, was under the more favourable circumstances resulting from the redemption of the feudal dues, able to pay off

APP. XXV. large sums. It can be confidently asserted that now much the smallest portion of the capital of the country is lent on real security, and that a very great number of farmers are in possession of active capital.

LOAN BANKS.

Para. 7, contd.

In Upper Suabia especially, the number of farmers who hold State securities is very large, and there are even many who hold shares in industrial undertakings of every description. In fact, it is probable that, taking the farmers as a whole, the active capital in their possession almost equals the amount of the debts and mortgages on the landed property, taken collectively, and that it may, therefore, be said, as a whole, to be free from debt.

The small properties are, however, too generally heavily mortgaged. The sanction of the communal authorities must be obtained to every mortgage which must be entered in the public register, and they would, of course, give their consent to no new loan if the debts of the intending mortgagee amount to the estimated value of his estate. Great security is thus afforded. In the absence of any agreement to the contrary among the parties concerned, security offered must exceed by one-half the amount of the mortgage.

III.—HAMBURGH.

There are no Government Banks or Public Companies which offer special facilities for raising loans upon landed property. There are, however, few estates within the Hamburg territory which are not encumbered with mortgage debts. The State Register of Mortgages affords a good security to lenders, and a great deal of landed and house property is mortgaged nearly up to its full value. When a son takes an estate as before mentioned, subject to payments to be made to his brothers and sisters, their shares usually remain as charges on the estate. So, also, in cases of sale, a portion of the purchase-money is almost always permitted to remain due upon mortgage security. The rate of interest is not fixed by law, and follows, in some measure, the rate of discount prevailing on the exchange. First mortgages at present pay 4 to 4½ per cent. interest; subsequent mortgages from 5 to 6 per cent.

IV.—FRANCE.

The facilities afforded for raising loans for purposes of agricultural improvements are not as great as are required. The "Crédit Agricole" is the only establishment which carries on operations of this kind to any extent. Since 1866 it has discounted to the amount of 40 millions sterling, and has advanced 2,480,000*l.* on agricultural produce and real property. Its commission varies from ½ to 1 per cent., but the rate of interest depends upon the risk and uncertainty of the guarantees. It averages, however, from 5 to 6 per cent. But, owing to the nature of these transactions, which are not as regular as commercial ones, the Bank of France, though not refusing, does not facilitate what is termed "papier agricole." There are Banks and Societies in some Departments, more or less in connection with the "Crédit Agricole," which carry on operations on a smaller scale, and from which the small proprietors derive great benefit. Loans are raised generally for the purchase of contiguous plots of land; in some cases, for the paying off in money the value of the portion of the land accruing to co-heirs, in order to avoid its division.

V.—BELGIUM.

APP. XXV.

LOAN BANKS.
Para. 7, *contd.*

No especial facilities are afforded in Belgium for borrowing money on lands, either from Government, special public Companies, or Banks. Land in Belgium is, as a rule, little burdened, but it is not uncommon for small cultivators to borrow money of local usurers or of notaries, their lands or stock forming the security. Many thus get into difficulties from which they are unable to extricate themselves.

Landed property in Belgium is very frequently mortgaged, and the rate of interest at which advances may be obtained upon mortgage depends very much upon the value of money at the time. During the war between Prussia and Austria in 1866, the rate of interest upon money advanced on mortgage reached 7 per cent. per annum; the present rate is about 4½ per cent. Loans are sought more frequently for the purpose of facilitating the purchase of land, than with a view of making improvements upon properties. There are two public Companies, the "Caisse des Propriétaires" and the "Caisse Hypothécaire," established in Brussels, both of which lend money on mortgage. The conditions upon which these Companies make these advances is that of repayment by annual instalments, which embrace a portion of the capital, interest on the money advanced, and a commission; whereas loans obtained from private persons, through notaries, are usually contracted for a specific term of years, generally ten. The expenses attendant upon raising money by mortgage, including registration and notarial fees, amount to 3 per cent. paid by the borrowers.

VI.—PORTUGAL.

(a). Special facilities for raising loans upon all landed property, whether in large or small parcels, are afforded by a public Company sanctioned by, and enjoying special privileges from, Government, under the provisions of the law of 13th July 1869, which enacts that any Land Credit Company, or Land Mortgage Bank, to be thereafter constituted, shall, upon the fulfilment of certain preliminary conditions, enjoy, during twenty-four years from the date of its official constitution, the exclusive privilege of issuing mortgage bonds or debentures, which shall represent solely and exclusively the transactions of the Companies in loans upon mortgages of real property. A Company was accordingly constituted under the provisions of this law, *viz.*, the "Companhia Geral do Credito Predical Portuguez," the statutes of which were approved by the State on the 25th October 1864.

(b). Up to the end of 1868, loans on the security of real property had been made by the Company to the amount of £1,096,664; the saleable value of the properties mortgaged amounting to £2,814,340. By far the largest portion of these loans, whether as regards number or amount, were raised at 6 per cent. interest, and were repayable by annuities extending over 60 years; three-fourths of the number of the loans were contracted for sums under £450; and one-half of the total value was raised in sums ranging from £20 to £2,3000. It is reasonable, therefore, to suppose that a considerable proportion of the money lent by the Company has been taken up by the smaller proprietors; and it will be remembered that the system may be said to be still in its infancy.

APP. XXV. (c). The terms and conditions upon which these loans are effected are—that the property mortgaged should be of twice the value of the amount advanced; that the sum borrowed shall be furnished to the borrower in mortgage bonds at par, bearing the same interest as the loan, the Company undertaking to negotiate the bonds and to make advances upon them; or, where the borrower prefers it, the loan may be made in money; that the long annuities by which the principal and interest are to be repaid shall never extend over a period of less than 10 or more than 60 years, and shall be payable in two equal half-yearly instalments; that such annuities shall comprise—

LOAN BANKS.
Para. 7, contd.

- (1). Interest, which shall never exceed 6 per cent. on the capital lent;
- (2). A sinking fund, to be determined by the rate of interest and the duration of the loan;
- (3). A commission for expenses of management, which shall never exceed 1 per cent. per annum;

that interest at the same rate as that on the loan shall accrue on the overdue half-yearly payments, and that default of payment of the annuities shall also entitle the Company to claim immediate payment in full of the debt, within 30 days from notice given, and, failing payment, to foreclose in due form of law. * *

(d). In practice, these loans scarcely ever bear less than 7 per cent. interest, independently of the sinking fund—a rate which will appear high in English eyes, but which is not excessive as compared with the ordinary interest of money and the average price of the Portuguese funds. There is, nevertheless, an opinion current in the country that the charge will be heavier than many of the impoverished estates will bear in the long run; that the Company will consequently be compelled in these cases to foreclose, and that considerable quantities of land will by this means be brought into the market—a result which, if it arises, will be analogous in many respects to the operation of the Encumbered Estates Act in Ireland. This result is rendered the less improbable by the fact that, while the ostensible object for which the loans are raised is the improvement of the property, they are frequently entered into to relieve the owner from pecuniary embarrassments arising from other causes.

VII.—DENMARK.

The freeholder often leases his land to his daughter—a practice fertile of matrimonial speculations, to which the peasantry are so prone. The heir would probably have to give a mortgage on the farm in order to raise the portions due to brothers and sisters. There are in Denmark four societies of the “Crédit Foncier” class, and the local savings banks also lend money on mortgage. The rule of the credit societies is to lend half the full value of the property at 4 per cent. interest, with 1*s.* 8*d.* per cent. for expenses, and 7*s.* 8*d.* for sinking fund. But the advance is in the societies’ paper, which at present stands at from 10 to 15 below par (100). The savings bank rate is about 4 per cent. on deposits, and 4 per cent. is charged on money lent on mortgage. Speaking generally, that part of the land of the kingdom which can be hypothecated is mortgaged up to 40 per cent. of the value. Many life-

tenants on becoming free-holders have paid down one-third of the price of the farm, giving the seller a mortgage on the land for the remainder, the rate being commonly 4 per cent. According to the usury law, which is generally evaded, 4 per cent. is the highest interest allowed on real property mortgages.

APP. XXV.

LOAN BANKS.

Para. 7, cont

VIII.—NETHERLANDS.

The Government affords no aid, either directly or indirectly, towards the raising of loans upon landed property. Four or five public Companies, whose special object it is to advance loans on mortgage of real property, exist in Holland, but they have no public character, and enjoy no privileges or special protection from the Government. These *Crédit Foncier* Companies, acting as intermediaries between the proprietors and the capitalists, accept all the responsibility attaching to each particular mortgage, and issue their obligations payable to bearer, guaranteed by the whole of the mortgages of the Company and their sinking fund. Notwithstanding these advantages, many capitalists prefer themselves to make advances directly on mortgage, either from force of previous habit, or from ignorance, or from a hope of obtaining a higher interest by making their own bare gains. It is easy to imagine that in remote districts, where access to an office of a Land Mortgage Company is difficult, and where one or another private capitalist happens to have peculiar facilities for putting himself in communication with the farmer, studying his wants, and ascertaining his means, the latter may prefer what seems to him the most natural mode of obtaining a loan.

The objects for which a proprietor farmer is tempted to effect a mortgage on his paternal estate are numerous. * * * But I believe that one of the most frequent objects of mortgaging estates is that of preventing a too great sub-division of property, on the death of its owner, amongst his heirs, by assigning to one or another of them his portion in other securities; this would be especially the case with regard to the portions of daughters.

Properties are very commonly mortgaged to the extent of half their value, and often above it. The total value of mortgages on real property in the Netherlands is about 40,000,000 *l.* sterling; but more than a half has been effected on terms varying from 5 to 5½ per cent., which point rather to house property, including, doubtless, farm buildings, than to the land itself. The rate of interest paid by farm property is from 4 to 5 per cent.

IX.—PRUSSIA.

(a). No special facilities for raising loans are afforded to peasant proprietors, either by Government or the Provincial Governments, and it cannot be said that special facilities are afforded by special public Companies or Banks (of which there are none aided by Government), except so far as the Mortgage Debenture Associations and the Mortgage Banks are especially established for the purpose of granting loans on properties of whatever size. The raising of such loans is subject to all the usual commercial incidents. The Rent-charge Banks, instituted for facilitat-

APP. XXV. ing the carrying out of the Stein-Hardenberg Legislation, are, of course, an exception. Loans are raised seldom for circulating capital, and amongst middle and small proprietors, mostly for paying portions to the children without dividing the land. The quite small proprietor cannot thus raise money, and is compelled to divide the land itself for the inheritance of his children. * * So far as partial statistics go, the peasant properties do not seem to be as heavily mortgaged as the privileged properties. By other accounts there is no difference in this respect between the two classes of property, and the land debt is two-thirds of the land value. The rate of interest varies from 4 to 6½ per cent. on small and less favourably situated properties. The quite small proprietors cannot dispose of mortgages.

LOAN BANKS.

Para. 7, contd.

(b).—THE MORTGAGE DEBENTURE ASSOCIATIONS.

(1). The real credit institutions are of many kinds, but in the first rank are the Mortgage Debenture Associations. The real credit institutions comprise also the provincial loan funds, "Hülfskassen," the savings banks, and many other banks and institutions which promote, more or less directly, the activity of the land-owner and agriculturist by offering facilities of money capital.

(2). The system of mortgage debentures is peculiarly a Prussian system, and these associations for their issue have many of them existed for nearly a century. That system arose in the reign of Frederic the Great. In 1769 the Silesian Association was founded; its leading idea was "that the land-owners belonging to the associated districts should form an association by which they made themselves mutually responsible to provide for every land-owner money to half the taxed value of his property, and to pay every creditor who had a mortgage debenture not only the half-yearly interest, but also the capital upon six months' notice." The favourable results of this institution soon became known, and the Associations of Pomerania, of Kurmark and Neumark, of West Prussia and of East Prussia, were founded in 1781, 1782, 1787, and 1808, respectively. All these institutions had for their object to make advances to the nobles and large land-owners for the promotion of agriculture. The first exception in favour of other properties was in the East Prussian Association. The principles common to all were that every owner of a privileged estate could claim a loan, and that such a loan should be granted in debentures to bearer to half (in East Prussia to two-thirds) of the taxed value of the property. The debentures were usually in two categories, at 4 per cent. and 3½ per cent. The mortgagor had to sell them in order to get his loan in cash. The debentures contained a description of the estate upon them, and they were guaranteed by the whole association. The mortgagor paid the interest to the Association, who paid it to the creditor. The Association could not give notice either to the creditor or to the debtor; but the former could give notice to call in the money. The compulsory Sinking Fund did not at first exist in all, but is a most advantageous principle of most of these associations. It has doubtless been productive of immense benefit. In the Posen Association it took the form of 5 per cent. charged to the debtor, and 4 per cent. paid to the creditor, the 1 per cent. being devoted to a sinking fund with a period of 41 years. The

plan was similar in the other institutions, but the sinking fund varied in form. The method of valuation varied much also. In later times peasant-proprietors have either been admitted to the associations, or special associations have been formed for them. * * Some of the modern associations accept properties of a very low value, such as those bringing in a net income of £7-10 a year. In the modern ones there has also been a different apportionment of the interest paid by the creditor, for a fixed percentage (usually $\frac{1}{2}$ per cent.) has been retained for expenses of management.

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LOAN BANKS.

Para. 7, contd.

(c).—THE RENT-CHARGE BANKS.

(1). The faculty of commuting rent-charges and services by money instead of land payment, which was offered by the first National Agricultural Laws, was of comparatively little use. It became obvious that the object of the commutation could not be attained unless the legislation provided means for furnishing with the necessary sums of money those of the peasants who had no capital with which to obtain the commutation. Hence the rent-charge banks were established in 1850, Saxony having led the way in 1832. The object of these banks is to pay for the peasant the commutation capital, receiving from him in return an annual sum which shall pay interest and shall gradually pay off the capital advanced. The peasant debtor is allowed to pay on during the sinking fund period any sums, however small, to accelerate the extinction of his rent-charge.

(2). The basis of this legislation is the law of 2nd March 1850, for the establishment of rent-charge banks. It commences by directing the establishment of a rent-charge bank for each province, and by stating the mode of attaining the object in view. It was decided, after deliberation, that provincial banks were preferable to a central bank. The law grants the State guarantee to the fulfilment of all the obligations undertaken by the bank. This guarantee involves no pecuniary sacrifice, but strengthens the credit of the banks. The banks are under the supervision of the Member of Finance and the Member of Agriculture, and are co-ordinate with the Special Procedure Authorities, and are carried on by a director and the necessary staff under the control of the provincial authorities. In all cases of commutation by means of the bank, the commutation debtor needs only to pay nine-tenths of it to the bank, for one-tenth can from the first day be written off. But he can elect to pay the full amount, and thus shorten the period of repayment. In cases of arrears, he has to pay a special yearly sum equal to one-twentieth of these arrears to liquidate them.

(3). The rent-charges are preference claims upon the land. This claim is not, however, to interfere with sub-division of the land, as it is to be distributed according to the rule for taxes. The rent-charges can be paid in monthly instalments with the taxes. It is the custom in Prussia to collect taxes in monthly instalments. The periods of repayment are 673 months when the tenth of the commutation capital is written off, and 493 months when the total commutation capital is to be repaid. Payments of capital may be made at any time in acceleration of the extinction of the charge, and for this purpose tables are annexed to the law. It was not deemed necessary to fix a minimum sum below which

APP. XXV. no such payments would be received, as no use had been made of the faculty to pay in such low minimum sums as 6*d.* in the Eichsfeld Sinking Fund Association, and as 1*s.* in the Land-rent Charge Bank of Saxony.

LOAN BANKS.

Para. 7, contd.

(4). The receiver of the commutation obtains from the bank a capital sum of 20 years' purchase of the rent-charge. This is paid in rent-charge debentures of a fixed amount, and the fractions beyond such an amount are paid in cash. There are debentures of 1,000, 500, 100, 25, and 10 dollars, bearing interest at 4 per cent. in half-yearly payments. Coupons for eight years are attached, and these are renewed as may be necessary. These coupons are payable in cash, and are legal tender in all Government offices. The payment of the coupons is barred, in favour of the bank, by the lapse of four years. The difference between the 4 per cent. interest on the debenture and the $4\frac{1}{2}$ or 5 per cent. reserved as rent charge, is to be applied to the extinction of the debentures. Every half-year, after the first year, so many debentures must be paid off in full, by drawings, as shall amount to the sum of the cash receipts from the above difference, and the commutation capital paid in during the half-year. After ten years the payment of drawn debentures is barred in favour of the bank.

(5). The law contains some special directions respecting the rights of third persons. A reserve fund is formed by interest on cash balances and by the barring of coupons or debentures. This reserve fund is to be applied to replacing loans of the general fund, and whenever it does not suffice, the State pays the difference. The State undertakes the cost of management.

(d).—AGRICULTURAL LOAN UNIONS.

The Raiffeisen, or agricultural loan unions, are associated banks; but they do not bank for the profit of this or that person. No banking profit is levied, only so much interest being charged as will repay the interest of the borrowed capital, and repay the actual costs of management. The guarantee of such unions is by the joint liability of members to the amount of all their property.

(e).—THE SAVINGS BANKS.

Of Prussia are guaranteed by the department or the town for the benefit of which they are founded. Their profits are consequently devoted to general objects connected with the department or town. In this way many buildings for the benefit of the community have been erected.

(f).—EAST PRUSSIA.

Instead of leasing a farm, as in England, a man here buys a freehold estate. It seldom happens that a man has the whole of the purchase money to pay down,—one-half, a third, a quarter, or less, of the sum total is only usually paid. The Royal Landschafts Bank, a Government institution, grants loans up to one-third or one-half of the appraised (low estimate) value of the estates. These loans are granted in the shape of loan letters ("Pfand-Briefe") with coupons attached bearing $3\frac{1}{2}$ and $4\frac{1}{2}$ per cent., which are paid by the Landshafts Bank. These loan letters,

or Pfand-Briefe, are subject to heavy discount in the money market, and the loan taker has virtually to pay 6 to 7 per cent. for the advance per annum.

APP. XXV.

LOAN BANKS.

Para 7, contd.

X.—AUSTRIA.

(a). Special facilities for raising loans upon immoveable property are afforded by special public companies, banks, savings banks, &c. All these establishments are independent of the State; although, in point of fact, some of them have been constituted under Government protection, and endowed by Government with special privileges. The terms of these establishments for loans upon landed securities are generally either repayment at a fixed date, or six months or a year after notice; or else by instalments, within 15 to 32 years. The usual rate of interest was, till quite recently, 5 per cent. But two years ago the laws against usury were abolished, and since then the rate of interest has risen to 6 per cent.

(b). An immense impetus was given to the establishment of credit banks and companies, &c., by the change effected in the position of the agricultural classes under the operation of the Austrian Land Laws of 1848. Indeed, so far as I (Lord Lytton) can ascertain, no institutions of this kind existed previous to that period. The most important of those now existing are the Austrian "Credit Institute," with a special capital of 40,000,000 for loans on mortgage, the "Mortgage Bank of Bohemia," the Austrian "Boden Credit Anstalt," the "Agrar Bank," and the Galician "Provincial Credit Institute," which is an establishment of older standing. The total number of these establishments is, however, insufficient to meet the demand of the owners of land. The highest interest at which these banks advance money on landed security is 7 per cent., their usual rate of interest being, as before stated, 6 per cent. It is the opinion of the Government that this rate of interest is too high to afford effectual relief to the wants of the landed proprietors, especially the small proprietors; and that it is out of all proportion to the produce of the land. Landed proprietors can only afford it by combining agricultural with commercial or manufacturing industry. The loans on mortgages made by these banks and companies amount to only 6 per cent. of the total loans on mortgage. The remaining 94 per cent. are invested by private capitalists and savings banks.

XI.—RUSSIA.

(a). Being either mortgaged to the State, or held at a rental, the lands of the peasantry cannot be sold, transferred, or divided, except under the provisions of the Emancipation Act, the due execution of which is committed to "Provincial Courts for regulating the affairs of the peasantry." All transactions between peasants in respect of lands must be legalised by their Cantonal Administration, and confirmed by the Provincial Courts above named.

(b). The peasant allotments are in process of being purchased, with the aid of Government, to the extent of four-fifths of the value placed upon them by the Emancipation Act. Until the general mortgage

APP. XXV. (now¹ amounting to 487,174,281 roubles, or £64,956,570) is paid off, the peasantry will be unable to raise any further loans on the legal security of immoveable property.

LOAN BANKS.

Para. 7, contd.

(c). While assisting the peasantry, the Imperial Government has, at the same time, foreclosed the mortgages which it held on the lands of the nobility or gentry to the extent of £53,000,000. The Act of Emancipation included a kind of Encumbered Estates Act, inasmuch as all debts due to Government loan banks are deducted from the gross amount of compensation given to landed proprietors for the alienation of portions of their lands to the peasantry.

(d.) There are now two land banks in Russia, one at Kherson the other at St. Petersburg; but their advances are made principally to large landed proprietors, who, since the emancipation of their serfs, have endeavoured to work their estates with the aid of capital.

8. It appears from this appendix that the legislation respecting land in most of the countries in continental Europe has been marked by a care, forethought, and intelligent concern for the well-being of the class of cultivators which we miss in the similar legislation in England.

¹ January 1870.

APPENDIX XXVI.

LIBERATION OF CULTIVATORS.

1.—DENMARK.

REPORT BY MR. G. STRACHEY (*18th December 1869*).

I. The account given by native historians of the agricultural state of Denmark in the middle of the last century almost passes belief. Potatoes, clover, and several other important plants were unknown. Wheat was only cultivated in Laaland and Falster; hemp, flax, rape, and mustard, scarcely anywhere. The population was at a stand-still, or on the decline. The peasant's farm had been taken wholesale into the manors for want of tenants to occupy them. The nobles were abusing their power to the utmost, especially their territorial jurisdiction, which they exercised with atrocious rigour in a kind of Court Baron where the judges were often the lords' own footmen and coachmen. But about a hundred years ago a better state of things began. Parallel with the rise of the French Physiocrats there appeared in Denmark a school of Economists, headed by Pontoppidan, whose writings opened a way for the land reforms instituted and suggested by foreigners like Reverdil, the Bernstorfs, Stolberg, and last, though by no means least, the enlightened and unfortunate Struensee.

II. In 1761 Count Stolberg counselled the emancipation of the peasant farms of one of the royal properties. The peasants were granted hereditary tenure on a quit-rent "*Arvefoeste*"; their "*corvée*" being commuted to a cash payment, an example followed on the estates of the city of Copenhagen. Soon the crown domains were sold wholesale, partly in order to raise money for an expected war with Peter III of Russia, the farms being in some instances bought by the tenants. A law of 1769, in which I conjecturally trace the hand of Reverdil, encourages the great proprietors of the soil to sell the farms of the "*Böndergods*" to their occupiers. In a preamble which reads like a chapter from a political treatise by some advanced thinker of the 19th century, the legislator declares that the feeling that a man is bestowing his labour on his own land is the best spur to agricultural industry and progress. Wherefore the law grants that the enjoyment of the privileges attached to a "*Sødegaard*" shall henceforth be independent of the quantity of peasant earth attached thereto, thus removing a main stumbling block from the way of proprietors who might be disposed to sell their tenemental farms.

III. After the fall of Struensee there occurred a short period of legislative re-action, but to the influence of Guldberg soon succeeded the enlightened endeavours of Count Reventlow and the younger Bernstorf. Under the regency of the Crown Prince Frederic a complete series of land reforms was carried out. Measures were taken to do away with the intersection of properties. More Crown lands were resigned to the

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Para. 1, contd.

tenants for a quit-rent. The tie which under the name of "Stavnsbaand" bound the peasantry to the soil was abolished.¹ The "corvée" was defined; the tithe was lightened and adjusted; corn payments were allowed to be commuted; the housemen were furnished with small allotments. The permission of 1769, which had been withdrawn after the fall of Struensee, was renewed, and the relations of landlords and tenants were regulated afresh in the interest of the latter.

IV. These reforms were followed by a rapid change for the better in the agrarian condition of Denmark. But relapses occurred, one between 1818 and 1826, so desperate that landed property lost more than half its value. At the same time illiberal regulations were passed. The lease to the landlords to sell farms without loss of fiscal privileges was cancelled. Large numbers of the newly-created freeholders disappeared. In 1835 was inaugurated the "Slanderforfating," or Representative Constitution, according to which two Consultative Assemblies, one in Jutland, the other in Zealand, were to be regularly convoked. Farmers, both freeholders and leaseholders, got elected to the Assemblies, and the political agitation which followed penetrated downwards. Soon a certain social ferment was remarked amongst the peasants. The "Bonde's" horizon was no longer bounded by corn, cows, and horses. He was heard to talk of equal taxation, services, freeholds, and quit-rents. A newspaper edited by J. A. Hansen began to discuss all manner of agrarian questions. The feudal pretensions and extortions of the landlords were challenged at country meetings, and there were angry debates in the Assemblies. Far from declining the contest, the landlords came courageously to the front. * * *

V. What the peasants wanted was to be treated like human beings, to have the land tax imposed on the manors, and, above all, that the 30,000 leaseholders might become leaseholders of the farms which they occupied by the "Fæste" tenure. But this, it was now evident, the "Bonde" would never obtain by a mere social movement. Such reforms could only be carried by a strong political party, and accordingly to acquire political influence became the instinctive if not reasoned object of the "peasants' friends." * *

VI. In the Constitutional Assembly of 1848 the necessity of making the life-tenants into free-holders was recognised by the cabinet of the day. In 1849 a Land Commission, named for this and general purposes, unanimously asserted the State's right to impose such a sacrifice on the landholders, but came to no distinct conclusion as to the expediency or manner of a forcible solution. In 1850, the "corvée" and the fiscal privileges of "free earth" were abolished; but the question of tenures

¹ Confining to the comparative obscurity of a note an essential historical explanation, I would remark that the Danish peasants, originally freemen, and to a great extent freeholders, gradually fell into the practice of feudal "Commendation." The Danish form of this mediæval institution was called "Vornedskab," a relationship under which, by the middle of the fourteenth century, the "Bonde" had been transformed into a kind of "villein regardant." In later times it happened that owing to the oppression of the lords, and other causes, "there was not a man to till the ground," so that Denmark was covered with "latifundia." To remedy this, King Frederick IV instituted a militia (1701 and 1724), on whose rolls all peasants were inscribed, from the age of 14 to 35. By threatening the peasants with the army, the lord could drive them to take his farms; this was the so-called "Stavnsbaand."

still lay dormant. In the years next following, J. A. Hansen, B. Christensen, Tischerning, and other peasants' friends, introduced or provoked measures for selling to the actual tenants the remaining farms of the Crown domains, of the rich College of Sorø, of the University and City of Copenhagen, and other corporate endowments; also Bills removing the prohibition of the sale of the peasants' farms of entailed estates. Meanwhile, several attempts were made to bring about a forced solution. Bishop Mourad, backed by the eminent jurist Larsen, introduced a Bill to compel landlords to sell their farms at full compensation rates. But this, and seven other analogous projects, some of them less rigorous, fell through. Later on, Bishop Mourad, then Minister of the Interior, whose views after ten years had grown more conservative, brought in the Bill of February 1861, which allowed proprietors of tenemental lands, freehold or entailed, who should sell nine farms to the actual tenants or their children (real, step, or adopted), to absorb into the manor, from the rest of the "Böndergods" land equivalent to one month of all the new freehold property. Between 1861 and the session of 1868-69, the question of a forced conversion may be said to have dropped. * *

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VII. But the grand object of Count Frijs and his friends was to break the neck of the agitation of the peasants' friends by themselves coming forward in a "Landowner's Society" as agrarian reformers, and, in particular, with the announcement that they would promote the conversion of the tenemental farms into freeholds. By the force of example and influence, Count Frijs and his associates gave, or were believed to have given, so great an impulse to the sale of "*fæste*" land, that the peasants' wish for a forcible expropriation grew weaker. While the middle class, seeing that the desired conversion of tenure was actually in progress, became reluctant to support measures in which some of them saw the beginnings of social revolution. * *

VIII. The basis of the Expropriation Bill just brought into the Folkething by J. A. Hansen, is the fact that the existing legal restrictions on the tenemental farms deprive them of a portion of their proper commercial value. If a "*fæste*" farm and an adjacent freehold be sold together, the freehold will, *ceteris paribus*, something fetch from one-third to one-sixth more than the "*fæste*" farm. This is the natural result of the leasehold being subject to so many artificial restraints, and also of the circumstance that the owner cannot, in practice, sell it in open market. Mr. Hansen proposes to let all existing contracts run, but to prohibit the issue of new life-leases, except to consenting tenants. Should no private arrangement be concluded between the landlord and representatives of the last tenants, the farm is to be put up to auction, one-third of the price realised being handed over to the representatives of the last tenant through the public treasury. Under this arrangement the landlord would be permitted to buy the land, which would then be at his disposal as a separate freehold, though not for absorption into the manor. Comparing Mr. Hansen's actual measure with previous schemes, or, for instance, with Bishop Mourad's first Expropriation Bill, it is evident that the landlords are now offered better terms than before. For an opening is allowed them to make the tenemental farms their own, on payment of a fine to the peasantry, in return for the removal of the

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legal shackles which now obstruct their full enjoyment of proprietary rights. Exceptional cases apart, a landlord selling by the proposed auction would, in spite of the deduction of the one-third fine, realise at least as much money as he could by a sale to-day, under the conditions imposed on him by existing law and custom. * *

IX. This measure has been crossed by a ministerial programme, which I may briefly describe as the proposed destruction of the elaborate legal system described in the first chapter of this report. Details apart, it corresponds in principle with Mr. Hansen's scheme, but gives the landlord larger facilities for acquiring the tenemental lands, and grants general free trade in land, in opposition to the Protectionist policy of the "Peasants' Friends." This programme cuts both ways; but it is not at present introduced as a positive measure. * * *

X. The Cabinet of Count Frijs includes several country gentlemen. He himself is, or was, the greatest landholder in the north of Europe (Russian estates excepted), and he is officially pledged to the principle of conversion. Mr. Hall, and the remains of the National Liberal party, follow in the same line, and they will adhere to Mr. Hansen's proposals. Under these circumstances, it were rash for a foreigner to assert that the projected conversion is inexpedient, or that it is undesirable to accelerate its progress by a little legislative pressure. The English ear may at first seem to catch an echo of social revolution from the whole business; but such a prejudice should, I conceive, be cured by an impartial study of the Danish Statute Book. The tenures of Denmark are not the tenures of England. The Danish landlord is not, except as regards his demesne, the complete legal or customary master of his own. To the tenemental lands he stands, very roughly speaking, as did the zemindar to the ryot before the permanent settlement. From another point of view the analogy between the Bengalee and the Scandinavian would be close enough. If the zemindar-proprietor, or tax-gatherer, was not the mildest of masters, the Danish Jorddrot was, till recent times, the scourge of the peasantry. Under his parental love the Danish "bønde," now the freest, the most politically wise, the best educated of continental yeomen, was a mere hewer of wood and drawer of water. His lot was no better than that of the most miserable ryot of Bengal.

2. It appears that in Denmark the class of peasant-proprietors was destroyed by the usurpations of the nobles, until the decline of agriculture forced upon the government measures of reform. These were directed to promoting the purchase of their farms in fee-simple by the peasant-cultivators, or to fixing permanently the demand on them. Later, there was some re-actionary legislation; but agricultural reform is still tending in this direction.

3.—BADEN, GRAND DUCHY OF (*Report by Mr. E. P. M. Baillie, 9th December 1869*).

The tithes, dues, and various charges with which the land was at one time burdened, were all abolished by law during the period from 1833

to 1848, and compensation accorded to the land-owners for the losses thereby sustained. The burdens were commuted for a capital sum, generally 16 to 18 times the amount of their annual value. The law further provided that this capital, of which the State undertook to discharge one-fifth, should be paid off in equal portions annually (shorter periods not being excluded), together with 4 per cent. interest, during 25 years. Much of this capital was paid up very rapidly, and the various land-owners (mediatised Princes, private individuals, corporations, foundations, schools, &c.) soon found themselves in possession of considerable sums of ready money, which they again invested in land, at a time when the price of land was low, and let it out to tenant-farmers on terminable leases. This is the origin of tenant-farmers in Baden. The system, at any rate, works very well. I have been informed by several persons that these tenants are, as a body, the best farmers in the country, both as to intelligence and character. A statement of this kind will, however, always be disputed, and I cannot vouch for its truth.

We note that the State bore one-fifth of the payments to landlords for liberating the cultivators.

4.—AUSTRIA.

I.—REPORT BY MR. R. T. LYTTON (*31st December 1869*).

Parl. Paper,
Sess. 1870,
Vol. 60.

I. The application of the feudal system to land and labour lasted in Austria till the year 1848, when it was abolished by revolutionary legislation. Previous to the abolition of it industry was dependent on imperial concessions; capital was locked up by the usury laws and the want of banks; production was protected against competition, both at home and abroad, by a high import tariff and inland taxes. The home markets were isolated from each other by the deficiency of all means of transport. The agricultural class was exclusively composed of those who owned and those who cultivated the soil. The relations of the latter to the former were those of subjects to sovereigns. Agricultural labour was compulsory. The landlords held Baronial Courts, and exercised civil as well as criminal jurisdiction. These privileges, however, were accompanied by peculiar obligations; for it was incumbent on the proprietors to provide not only for the secular and religious education, but also for the general health and comfort of the labouring population. * * * Here it may be mentioned that the great landed proprietors were, in many provinces, the only manufacturers on a large scale.

II.—REPORT BY MR. R. T. LYTTON (*15th January 1870*).

After describing the change in land tenures effected by the land laws of 1848-49 (see Appendix XXIII, para. 12), Mr. (now Lord) Lytton continued—

(a). The manner in which this change was effected was by compensation from the State to the great proprietors for the pecuniary value of the

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feudal rights of which the State then deprived them. The compensation was fixed and provided for in the following way :—

(b). A commission was appointed by the State for the re-valuation of all the properties on which the above-mentioned change of tenure was to be carried out. In the composition of this commission all the great proprietors were fully represented.

(c). The commission having calculated the pecuniary value of the feudal rights enjoyed by each proprietor, and the consequent compensation due to each proprietor for the abolition of those rights, presented to the Government its estimate of the total amount.

(d). From this estimated total, the Government cancelled one-third; two-thirds remained to be provided for. The amount represented by these two-thirds the State undertook to pay in 5 per cent. bonds, the whole debt being redeemable in forty years by annual drawings at par. To carry out this engagement, therefore, it was necessary to provide not only for the annual interest on the debt, but also for its redemption by means of a sinking fund within forty years.

(e). One-third of the amount necessary for this purpose is provided for by a tax levied exclusively on the new peasant-proprietors, and regarded as the price payable by them to the State for the immense advantage which they have derived from the legislation of 1848. The remaining one-third is assessed as a sur-tax on the local taxation of each province, and annually voted as part of the local budget by each of the Provincial Diets.¹

(f). The result of this arrangement is, that of the total amount of compensation assigned by the Land Commission to the great proprietors, one-third has been altogether disallowed by the State, and one of the remaining two-thirds is raised by a tax levied upon the great proprietors themselves. Virtually, therefore, the compensation they receive for the abolition of their feudal rights is only one-third of their estimated pecuniary value.

(g). The great proprietors generally (and so far as I am competent to judge justly) complain of this. But there are, at the present moment, very few of them who are not ready to admit that, despite also of the great inconvenience and heavy pecuniary loss to which they were subjected by the suddenness of the change through which they have passed, that change has been on the whole decidedly beneficial to themselves as well as to all other classes of the population, from an agricultural no less than from a social point of view.

(h). The improved condition of the peasant is, in most provinces of the empire, conspicuous. The great proprietors, constrained in order to escape ruin to cultivate their estates more carefully, have supplied the place of forced labour by greater scientific knowledge and more efficient machinery. The result is that many of them have doubled and some have trebled the income of their properties since 1848; whilst the average

¹ These bonds are called "Grund Eulastung," or Land Disencumbrance Bonds. They are issued for every province separately; the amount in each province limited to the sum fixed by the Commissioners for indemnities to the land-owners of the province. The bonds are given to each landlord in proportion to the amount of his claim for indemnity as established by the Commission.

market price of land has risen at least one hundred per cent., and in some provinces still higher, in that period. * *

(i). The laws of 1848-49 created an entirely new class of peasant-proprietors, and that class is now, on the whole, a thriving one. But those laws left intact the old class of great proprietors, whose properties are at this day as large as (and much better cultivated and more remunerative than) they were previous to 1848. The legislation of 1848 in Austria did not turn tenant-farmers into proprietors, for the bondsmen whom it emancipated already were proprietors. It simply converted feudal proprietorship into free proprietorship. It did not deprive the great proprietors of their properties; it only deprived them of certain feudal rights over the property of others.

We note that, in the measures for liberating the cultivators, the State, so far from recognizing any title in the great proprietors to be compensated for loss of "the unearned increment," struck off one-third from the estimated value of the rights which were to be purchased from the feudal proprietors.

5.—FRANCE.

M. DE TOCQUEVILLE (*France before the Revolution of 1789*).

I. I find many indications of the fact that in the middle ages the inhabitants of every village formed a community distinct from the lord of the soil. He no doubt employed the community, superintended it, governed it, but the village held in common certain property which was absolutely its own; it elected its own chiefs, and administered its affairs democratically. This ancient constitution of the parish may be traced in all the nations in which the feudal system prevailed, and in all the countries to which these nations have carried the remnants of their laws. These vestiges occur at every turn in England, and the system was in full vigour in Germany sixty years ago, as may be demonstrated by reading the Code of Frederic the Great. Even in France in the eighteenth century some traces of it were still in existence. * *

II. For several centuries the French nobility had grown gradually poorer and poorer. "Spite of its privileges, the nobility is ruined and wasted day by day, and the middle classes get possession of the large fortunes," wrote a nobleman in a melancholy strain in 1755; yet the laws by which the estates of the nobility were protected still remained the same, nothing appeared to be changed in their economical condition. Nevertheless, the more they lost their power the poorer they everywhere became in exactly the same proportion.

III. The French nobility still had entails, the right of primogeniture, territorial and perpetual dues, and whatever was called a beneficial interest in land. They had been relieved from the heavy obligation of carrying on war at their own charge, and at the same time had retained an increased exemption from taxation, that is to say, they kept the compensation and got rid of the burden. Moreover, they enjoyed several other pecuniary advantages which their forefathers had

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never possessed; nevertheless they gradually became impoverished in the same degree that they lost the exercise and spirit of government. Indeed, it is to this gradual impoverishment that the vast sub-division of landed property which we have already remarked must be partly attributed. The nobles had sold their lands piecemeal to the peasants, reserving to themselves only the seignorial rights which gave them the appearance rather than the reality of their former position. Several provinces of France were filled with a poor nobility, owning hardly any land, and living only on seignorial rights and rent-charges on their former estate.

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IV. In no part of Germany, at the close of the eighteenth century, was serfdom as yet completely abolished, and in the greater part of Germany the people were still literally *adscripti glebæ* as in the middle ages. Almost all the soldiers, who fought in the armies of Frederic II and of Maria Theresa, were in reality serfs. In most of the German States, as late as 1788, a peasant could not quit his domain; and if he quitted it, he might be pursued in all places wherever he could be found, and brought back by force. In that domain he lived, subject to the seignorial jurisdiction which controlled his domestic life and punished his intemperance or his sloth. He could neither improve his condition, nor change his calling, nor marry, without the good pleasure of his master. To the service of that master a large portion of his time was due. Labour rents (*corvées*) existed to their full extent, and absorbed in some of these countries three days in the week. The peasant rebuilt and repaired the mansion of the lord, carted his produce to market, drove his carriage, and went on his errands. Several years of the peasant's early life were spent in the domestic service of the manor house. The serf might, however, become the owner of the land, but his property always remained very incomplete. He was obliged to till his field in a certain manner under the eye of the master, and he could neither dispose of it nor mortgage it at will. In some cases he was compelled to sell its produce; in others, he was restrained from selling it. His obligation to cultivate the ground was absolute. Even his inheritance did not descend without deduction to his offspring: a fine was commonly subtracted by the lordship. I am not seeking out these provisions in obsolete laws. They are to be met with even in the Code framed by Frederic the Great, and promulgated by his successor at the very time of the outbreak of the French Revolution.

V. Nothing of the kind had existed in France for a long period of time. The peasant came and went, and bought and sold, and dealt and laboured, as he pleased. The last traces of serfdom could only be detected in one or two of the eastern provinces annexed to France by conquest; everywhere else the institution had disappeared; and, indeed, its abolition had occurred so long before, that even the date of it was forgotten. The researches of archæologists of our own day have proved that as early as the thirteenth century serfdom was no longer to be met with in Normandy.

VI. But in the condition of the people in France another and a still greater revolution had taken place. The French peasant had not only ceased to be a serf, he had become an owner of land. This fact is still at the present time so imperfectly established, and its consequences, as will

be presently seen, have been so remarkable, that I must be permitted to pause for a moment to examine it:—

(a). It has long been believed that the sub-division of landed property in France dates from the Revolution of 1789, and was only the result of that revolution. The contrary is demonstrable by every species of evidence.

(b). Twenty years at least before that revolution, agricultural societies were in existence which already deplored the excessive sub-division of the soil. "The division of inheritances," said M. de Turgot, about the same time, "is such that what sufficed for a single family is shared between five or six children. These children and their families can, therefore, no longer subsist exclusively by the land." Neckar said a few years later that there were in France an *immensity* of small rural properties. I have met with the following expressions in a secret report made to one of the provincial Intendants a few days before the revolution: "Inheritances are divided in an equal and alarming manner; and as every one wishes to have something of everything and everywhere, the plots of land are infinitely divided and perpetually sub-divided." Might not this sentence have been written in our days? * *

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VII. Already (about 1789), as at the present time, the love of the peasant for property in land was intense, and all the passions which the possession of the soil has engendered in his nature were already inflamed. "Land is always sold above its value," said an excellent contemporary observer, "which arises from the passion of all the inhabitants to become owners of the soil. All the savings of the lower orders which elsewhere are placed out at private interest, or in the public securities, are intended in France for the purchase of land." Amongst the novelties which Arthur Young observed in France, when he visited that country for the first time, none struck him more than the great division of the soil among the peasantry. He averred that half the soil of France belonged to them in fee. "I had no idea," he often says, "of such a state of things;" and it is true that such a state of things existed at that time nowhere but in France, or in the immediate neighbourhood of France, *viz.*, in the districts of Germany which lay on the banks of the Rhone. * *

VIII. The effect of the revolution was not to divide the soil, but to liberate it for a moment. All these small land-owners were, in reality, ill at ease in the cultivation of their property, and had to bear many charges or easements on the land which they could not shake off. These charges were no doubt onerous. But the cause which made them appear insupportable was precisely that which might have seemed calculated to diminish the burden of them. The peasants of France had been released, more than in any other part of Europe, from the government of their lords by a revolution not less momentous than that which had made them owners of the soil. * *

IX. But what I am here concerned to remark is that throughout Europe at that time the same feudal rights, identically the same, existed, and that in most of the Continental States they were far more onerous than in France. I may quote the single instance of the seigniorial claim for labour. In France this right was unfrequent and mild; in Germany it was still universal and harsh. Nay, more; many of the rights of feudal origin which were held in the utmost abhorrence by the last generation

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of Frenchmen, and which they considered as contrary, not only to justice, but to civilisation,—such as tithes, inalienable rent charges, or perpetual dues, fines or heriots, and which were termed in the somewhat pompous language of the eighteenth century *the servitude of the soil*,—might all be met with at that time, to a certain extent, in England, and many of them exist in England to this day. Yet they do not prevent the husbandry of England from being the most perfect and the most productive in the world, and the English people is scarcely conscious of their existence. How comes it, then, that these same feudal rights excited in the hearts of the people of France so intense a hatred that this passion has survived its object, and seems therefore to be unextinguishable? The cause of this phenomenon is, that the French nobility had long since lost all hold on the administration of public affairs, except on one single point,—that, namely, of justice. On the one hand, the French peasant had become an owner of the soil, and on the other, he had entirely escaped from the government of the great landlords. Many other causes might doubtless be indicated, but I believe these two to be the most important.

X. If the peasant had not been an owner of the soil, he would have been insensible to many of the burdens which the feudal system had cast upon landed property. What matters tithe to a tenant-farmer? He deducts it from his rent. What matters a rent-charge to a man who is not the owner of the ground? What matter even the impediments to free cultivation to a man who cultivates for another?

XI. On the other hand, if the French peasant had still lived under the administration of his landlord, these feudal rights would have appeared far less insupportable, because he would have regarded them as a natural consequence of the constitution of the country. When an aristocracy possesses not only privileges but powers, when it governs and administers the country, its private rights may be at once more extensive and less perceptible. In the feudal times, the nobility were regarded pretty much as the Government is regarded in our own; the burdens they imposed were endured in consideration of the security they afforded. The nobles had many irksome privileges; they possessed many onerous rights; but they maintained public order; they administered justice; they caused the law to be executed; they came to the relief of the weak; they conducted the business of the community. In proportion as the nobility ceased to do these things, the burden of their privileges appeared more oppressive, and their existence became an anomaly.

XII. Picture to yourself a French peasant of the eighteenth century, or, I might rather say, the peasant now before your eyes, for the man is the same—his condition is altered, but not his character. Take him as he is described in the documents I have quoted—so passionately enamoured of the soil, that he will spend all his savings to purchase it, and to purchase it at any price. To complete this purchase he must first pay a tax, not to the Government, but to other land-owners of the neighbourhood, as unconnected as himself with the administration of public affairs, and hardly more influential than he is. He possesses it at last; his heart is buried in it with the seed he sows. This little nook of ground, which is his own in this vast universe, fills him with

pride and independence. But, again, these neighbours call him from his furrow, and compel him to come to work for them without wages. He tries to defend his young crop from their game; again they prevent him. As he crosses the river, they wait for his passage to levy a toll. He finds them at the market, where they sell him the right of selling his own produce; and when, on his return home, he wants to use the remainder of his wheat for his own sustenance—of that wheat which was planted by his hands, and has grown under his eyes—he cannot touch it till he has ground it at the mill and baked it at the bakehouse of these same men. A portion of the income of his little property is paid away in quit-rents to them also, and these dues can neither be extinguished nor redeemed.

XIII. Whatever he does, these troublesome neighbours are everywhere on his path, to disturb his happiness, to interfere with his labour, to consume his profits.

This too faithfully describes a radical error of Lord Cornwallis, who found existing as zemindars a class of persons who were administrators of districts and of the police; attracted to them by their official status, Lord Cornwallis declared these zemindars proprietors of the soil, in the same series of regulations by which he divested them of administrative functions, and sowed thereby the seeds of that disaffection which, as M. de Tocqueville points out, the cultivating proprietors could not but feel towards feudal lords, on the latter ceasing to exercise over them any semblance of official authority, and ceasing to perform in the midst of them any of those duties of administration which the cultivators could regard as an equivalent for the rent paid to the zemindars.

6.—PRUSSIA.

MR. R. B. D. MORIER, (*Cobden Club Essays*).

I. (a). This is the first period of the Teutonic community. Its characteristic features are that there are two distinct communities—an *agricultural* community, and a *political* community—inseparably identified with each other, the rights conferred by the one being correlative to the duties imposed by the other. We may describe it as a period of *land-ownership* and *equal possession*, in which the freeman is a “miles” in virtue of being a land-owner.

(b). The second period can be described as the period of *land tenure*, and of *unequal possession*, in which the feudal tenant is not a “miles” in virtue of being a *land-owner*, but a *landholder* in virtue of being a “miles.” * *

II. (a). The application of the *feudal* system in Germany was necessarily a much slower process than in the Roman provinces, where it was, as it were, called into life by the exigencies of conquest. In the one case, the raw material that it had to work up consisted of free *allodial* proprietors, who deemed themselves the equals of the king, and whose personal status was legally higher than that of his proudest *Dienstmannen*; in

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the latter case it consisted principally of conquered Romans and Provincials who were glad to get back their lands on any terms.

(b). In Germany, therefore, it was an economical necessity rather than a political convulsion which brought about the change. As population increased, more and more townships were settled on the common lands, the proportion between pastoral as compared with agricultural wealth decreased, and the ordinary freeman was gradually reduced to little more than what his lot in the arable mark brought him in. Simultaneously with this diminution of his means rose the cost of his equipment for the field and the strain put upon his resources by having to maintain himself during the long summer and winter campaigns, which were now the rule. Soldiering under Charlemagne against the Saracens in Spain, or the Huns on the Danube, was different work from an autumn raid across the Rhine, after the harvest was got in. Accordingly, as early as Dagobert's time, we find the possession of five allotments to be the minimum qualification required for a full-armed "miles."

(c). Hence, partly by his poverty, partly by the pressure, often amounting to force, brought to bear upon him by the lords who wished to increase their demesne lands, the freeholder was little by little reduced to the condition of an unfreeholder. By "commending" himself ("*commendatio*," "*traditio*") to a superior lord, that is, by surrendering the "*dominium directum*" of his "*allodium*," and receiving back its "*dominium utile*," the freeman lost his personal rights, but obtained in return protection against the State, *i.e.*, against the public claims that could be made upon him in virtue of his being a full member of the political community. According to the nature of his tenure, he had to render military service (no longer as a national duty, but as a personal debt) to his superior, and in return was maintained by his lord when in the field; or, if his tenure was a purely agricultural one, and it is with these we are concerned, he was exempt from military service, and only rendered agricultural service.

(d). In this way, as generation followed upon generation, the small free allodial owners disappeared, and were replaced by unfreeholders. But the memory of their first estate long lived amongst the traditions of the German peasantry, and it required centuries before the free communities, who out of dire necessity had, by an act of their own, surrendered their liberties into the hands of the lord of the manor, sank to the level of the servile class settled upon their demesnes proper by the lords of the soil. * *

III. (a). In the peasant's war which followed the Reformation, the Bauer made a desperate attempt to recover his lost liberties; and in the record of grievances, upon the basis of which he was ready to treat, he showed how accurate was his recollection of the past, and how well he knew the points on which the territorial lords had robbed him of his just rights.

(b). The thirty years' war gave the final blow. With exceptions here and there, the tillers of the soil became a half servile caste, and were more and more estranged from the rest of the community, until, with the humanitarian revival at the close of the last century, they became to philanthropists objects of the same kind of interest and inquiry which negroes have been to the same class of persons in our day. * *

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IV. (a). The divorce between the agricultural and political community, even in regard to local affairs (except in the most limited sense), is complete; but the point which it is important to note is, that the agricultural community in Germany remains intact. The "Bauern Gemeinde" of the nineteenth century is in its essential points the microcosmic reproduction of the "Landes Gemeinde" of the first century, apart from the political rights and the cultivation in common. It is a corporation of free allodial owners who are allottees in an arable mark, and co-partners in common lands. It is an administrative unit, managing its own private affairs, like any other body corporate, with some slight remnants of a jurisdiction which in Prussia is still exercised under the surveillance of the manor.

(b). It is at this point that the agricultural history of England and Germany part asunder. In England the agricultural community, though traces of it are to be found much later than is generally supposed,—traces which may even to this day be deciphered—from a very early period ceases to be conterminous with the self-governing body. Not the agricultural, but the ecclesiastical community, the parish, becomes with us the administrative unit, and the lord of the manor, except in regard of the free holders who make up the court baron, finds himself face to face, not with a compact association and a recognised corporation, but with isolated individuals.

V. (a). We have now arrived at the third and last period. It is that with which we have to deal in treating of the agrarian legislation of Prussia during the present century. It is marked by the demolition of the feudal edifice, and the removal of the materials of which it was built. *It can be described as the return to free ownership with unequal possession.*

(b). The three principal incidents of the process can be classed as follows:—

(1). Abolition of villeinage in so far as it affects the personal "status" of the villen.

(2). Abolition of villen and other feudal tenures, and substitution in lieu thereof of allodial ownership.

(3). Removal from the land thus allodially owned of all charges, whether of a public or private character, derived from the feudal forms of tenure and from the feudal organisation of society.

The three great efforts made by the Legislation of Prussia in 1807, 1811, and 1850, respectively, correspond to these three incidents.

VI. From this it will be abundantly manifest that a similar process of legislation has marked the history of every State in which the feudal system has been established. In England personal villeinage dies at a comparatively early date; we hardly know how, so noiselessly does it disappear. In the same noiseless way villen tenure loses its servile incidents and assumes the form of copyhold tenure, which tenure can by 15 and 16 Vic., c. 51, be commuted into freehold tenure at the instance of the lord of the manor or of the copyholder.

VII. Two accounts of the social state of Prussia at the time of the legislation of 1807 may be subjoined.

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(1).—MR. S. LAING—OBSERVATIONS IN EUROPE (*Second Series, 1850*).

(a). The social state of Prussia, up to the conclusion of the peace of Tilsit in July 1807, was, like that of the rest of Germany, essentially feudal. The land was possessed by a class of nobles who held the peasants on their estates as serfs or *leibeigen* people, *adscripti glebæ*.

(b). The *leibeigen* peasant worked every day, or a certain number of days weekly, on the farm of the proprietor or his tacksman, and had a hut to live in and a spot of land to cultivate for his own subsistence at spare hours.

(c). Another class of peasants, a little above the condition of *leibeigen*, held a larger occupancy of land, for which they paid certain fixed services of carts, horses, and ploughs, to the proprietor or tacksman, and certain payments in *naturalia* of the crops they raised. These payments, being of old standing and fixed by usage at the highest rate they could safely or profitably be raised to, were of the nature of quit-rents or feu duties, although not in general established by writings or feu charters.

(d). There were tacksmen or middlemen who took on lease a district or barony, with its village and peasants from the noble proprietor, paid him a money rent, and gathered in and turned to account the labour services, payments in kind, and whatever they could make out of the peasantry leased to them, and farmed the *manis* or demesne lands of the estate, with the labour of the *leibeigen* and the services of the other peasants. The same system existed in the north of Scotland until a late period.

(e). The nobles alone, in the greater part of Germany, could purchase and hold land that was free from such servitudes; they also were exempt from all taxes, unless a personal tax, called a knight's horse, fixed at forty-eight thalers; they were exempt from military service in person after the general establishment of standing armies instead of feudal services in the field.

(f). The peasant holdings or feued lands, held under services, often of a personal and even degrading kind, to the superior or feudal lord, were the only estates or landed properties that a capitalist not born noble could purchase or hold.

(g). The nobles had to support their peasants in cases of destitution from accidents of flood or fire, of failure of crops, of cattle murrain, and to provide them with medical assistance and medicines in cases of sickness. The principle of a poor-rate was thus acknowledged, even in this social state, and the liability of the land to subsist the population engendered on it.

(h). The peasant could not remove from the estate to which he belonged, without leave from his lord. He might be punished as a deserter, and could be reclaimed from any place he might fly to, unless he had enlisted in the army or had escaped to one of the free cities, such as Hamburgh, Frankfort, Lubeck, in which, after a year and a day's residence, he was entitled to protection. This was no dormant right of the middle ages to the property of *leibeigen* peasants as slaves. In Holstein itself, the focus of the flame for German liberty, the peasants were only liberated from the thralldom of *leibeigenschaft* about the beginning of the present century. Patrols of dragoons were kept on all the

roads to arrest leibeigen peasants attempting to desert from their baronial owners and to reach Hamburg or Lubeck. This social state was obviously not suited to the nineteenth century, or to a struggle for the maintenance of feudal institutions against republican armies. * * It was necessary for the safety of the country to reconstruct society. The rights of property had to give place to the rights of the community, to security, and to a social condition worth defending.

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(2).—MR. MORIER.

(a). At the period in question (before the Legislation of 1807), the entire land of Prussia (then, it must be remembered, consisting of the few provinces left to the King of Prussia by the peace of Tilsit) was distributed amongst three classes of society, carefully kept asunder, not by usage only, but by strict legal enactment,—nobles, peasants, and burghers. In other words, it was held by knights' tenure, villein tenure, and a sort of civil tenure which had grown up out of the privileges of town municipalities. These classes were distinct castes. Their personal status was reflected in the land held by them, and conversely the land held determined the status of the holder.

(b). The noble could follow no avocations but those of his caste. He could administer his estate, and serve the king either in a civil or military capacity. He could not occupy himself with trades or industries. He could acquire nobles' land, and therewith manorial rights over land held under villein tenure; but he could not acquire burgher land, or the *dominium utile*, i.e., the possession of peasant land.

(c). The burgher could not acquire nobles' land or peasants' land. The military profession was closed to him, as well as the higher civil employments.

(d). The condition of the peasant differed widely in the different provinces, and in the different parts of the same province. It was a mirror in which almost every phase of mediæval history was reflected. There was this feature, however, common to all peasant holdings: that they were not isolated farms, but united in a "commonalty," and that these "commonalties" stood under the jurisdiction of the manor.

(e). The rural area of Prussia was consequently divided into two kinds of districts. The Gutsbezirk or manorial district proper, consisting of the demesne lands, cultivated by the manorial proprietor, and in which he exercised the functions of a police magistrate directly, and the township of the peasant community, with its arable mark and its common mark, in which a Schulze (contracted from Schultheiss), usually an hereditary office, or one inseparable from a particular Hof, exercised the police authority in the name of, and under the supervision and control of, the lord of the manor.

(f). The different communities held by different kinds of tenure varying in an ascending scale from those in which the allottees were in a state of personal villeinage, with unlimited services, to those in which they were free-settlers, who, though under the jurisdiction of the manor, and paying dues to it in virtue of that jurisdiction, were yet owners of their lots. These distinctions generally may be traced to the original difference in the nature of the land held. In the one case, the communities had originally been slave communities, settled

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upon the demesne lands proper of large proprietors, and had gradually emerged to the comparatively higher level of villeinage, or they were communities of freemen or dependents, "liti," settled in the same way, who had gradually sunk to a state of villeinage. In the other case, they were originally the allodial owners of the land held by them, who had surrendered their rights of full ownership to the manorial lords on distinct stipulations, or they had retained the ownership of their land, and were only subject to the jurisdiction of the manor.

(g). The status of villeinage differed according as the villein was *leibeigen* (i.e., as his lord had rights of property in his body), or only "*erbunterthanig*," i.e., in a state of hereditary subjection to the manor, "*alscripti glebæ*." In its worst form the villein could be held to unlimited service, and could be deprived of his holding and located in another. * * This extreme form was, however, the exception to the rule. It occurred mostly in the more remote provinces. The milder form differed from the former in the services to be performed and the dues to be paid, being limited by local custom, and in a greater freedom in the disposal of the holding. The villein knew what work he and his team would have to perform in the course of the year, the number of years his children would have to serve in the household of the lord, the tax he would have to pay on their marriage, the amount of the mortuary dues which at his death the lord would have a right to. He also could buy his freedom at a fixed price, and, with the permission of his lord, dispose of his holding.

(h). The free peasant differed from the villein in having no personal dues to pay, and in his services and dues being usually recorded in writing in the grants made to him, and therefore bearing the character of a legal contract. He could not, however, acquire by purchase or inheritance other than peasant land, nor could he change his position by changing his country life for a city life; nor could he in the country exercise any trade or calling but that of agriculture.

(i). The land cultivated by the peasant, therefore, was divided into two principal categories:—

(1). That in which he had rights of property.

(2). That in which he had only rights of usufruction.

In both cases services were rendered and dues were paid in kind or money to the manor. But in the first case, these services and dues may be considered to have had a public, in the latter case a private, origin.

(3). As regards the land in which the peasant had only rights of usufruction, it was divided into two principal categories; viz.:

Land in which the peasant had hereditary rights of usufruction, and could transmit his holding to his descendants and his collaterals, according to the common law of inheritance.

(4). Land in which the occupier was only a tenant for life, or for a term of years, or at will.

In neither case, however, could the landlord re-enter on this land.

(j). The lords of the manor had been deprived of this right of re-entry, if it ever existed, by various edicts of the former Hohenzollern kings. Frederick the Great imposed a fine of a hundred ducats on any landlord who appropriated to his own use any land held by his peasants. At last a general law was passed on the subject.

(k). The manors were respectively held by the Crown, by corporations, lay and ecclesiastical, and by individual nobles. But whoever was the occupant, the functions of the manor in the body politic remained the same. The term implied a house with farm buildings (*the manor* in the community, the other manors having sunk to *mansi*, "messuages"); demesne lands cultivated by the labour of the peasants under its jurisdiction; rights of various kinds over the persons of these peasants and the lands occupied by them; correlative duties in the way of maintaining paupers, furnishing wood for the building and repair of the peasants' farm buildings, in some cases furnishing the stock of the farm, the building and endowing schools, &c. It *did not* imply the right of re-entry on the lands occupied by the peasants.

(l). Lastly, the entire burdens of the State, so far as they rested on real estate, were borne by the peasant land.

VIII. The edict of 9th October 1807 declared every inhabitant free to own landed property of every kind and description, without distinction of noble, burgher, or peasant owners or noble, burgher, or peasant lands, and abolished villeinage. "It is to be understood, however, that these freemen remain subject to all obligations flowing from the possession of land or from particular contracts to which, as freemen, they can be subjected." But while the edict of 1807 removed disabilities, it created no new forms of property. The lord was still owner of the peasants' land, but had no right to its possession. The peasant was free, but was not master of his labour. The Legislature of 1811 set itself to substitute allodial ownership for feudal tenure. The first part of the edict deals with peasant holdings in which the tenant has hereditary rights; the second with holdings in which the tenant has no hereditary rights.

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XXVI.

PRUSSIA.
Para. 6, contd.

PART I.

(a). All tenants of hereditary holdings, *i.e.*, holdings which are inherited according to the common law, or in which the lord of the manor is bound to select as tenant one or other of the heirs of the last tenant, *whatever the size of the holding*, shall by the present edict become the proprietors of their holdings, after paying to the landlord the indemnity fixed by this edict. On the other hand, all claims of the peasant on the manor, for the keeping in repair of his farm buildings, &c., shall cease.

(b). We desire that landlords and tenants should of themselves come to terms of agreement, and give them two years from the date of this edict to do so. If within that time the work is not done, the State will undertake it.

(c). The rights to be commuted may be thus generally classed:—

(I). Rights of landlord—

1. Right of ownership ("*dominium directum*").
2. Claim to services.
3. Dues in money and kind.
4. Dead-stock of the farms.
5. Easements, or servitude on the land held.

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XXVI.

PRIVILEGE.

Para. 6, contd.

(II). Rights of the tenant¹—

1. Claim to assistance in case of misfortune.
2. Right to gather wood, and other forest rights, in the forest of the manor.
3. Claim upon the landlord for repairs of buildings.
4. Claim upon the landlord, in case tenant is unable to pay taxes.
5. Pasturage rights on demesne lands or forests.

(d). Of these different rights, only a few, *viz.*, the dues paid in kind or money, the dead-stock, and the servitudes, are capable of exact valuation. The others can only be approximately estimated. To obtain, therefore, a solid foundation for the work of commutation, and not to render it nugatory by difficulties impossible to be overcome, we deem it necessary to lay down certain rules for arriving at this estimate, and to deduce those rules from the general principles laid down by the laws of the State.

(e). These principles are:—

- (1). That in the case of hereditary holdings, neither the services nor the dues can under any circumstances be raised.
- (2). That they must, on the contrary, be lowered if the holder cannot subsist at their actual rate.
- (3). That the holding must be maintained in a condition which will enable it to pay its dues to the State.

(f). From these three principles, as well as from the general principles of public law, it follows that the right of the State, both to ordinary and extraordinary taxes, takes precedence of every other right, and that the services to the manor are limited by the obligation which the latter is under to leave the tenant sufficient means to subsist and pay taxes.

(g). We consider that both these conditions are fulfilled when the sum total of the dues and services rendered to the manor do not exceed one-third of the total revenue derived by a hereditary tenant from his holding. Therefore, with the exceptions to be hereafter described, the rule shall obtain—

That in the case of hereditary holdings the lords of the manor shall be indemnified for their rights of ownership in the holding, and for the ordinary services and dues attached to the holding, when the tenants shall have surrendered one-third portion of all the lands held by them, and shall have renounced their claims to all extraordinary assistance as well as to the dead-stock, to repairs, and to the payment on their behalf of the dues to the State when incapable of doing so.

PART II.

(a). In the cases of holdings at will, or for a term of years, or for life, the landlord gets an indemnity of one-half of the holding under much the same conditions as in the case of the hereditary holdings. When the conditions differ, they do so in favour of the lord of the manor.

¹ It is worthy of remark that the tenant's "*dominium utile*," or right of possession, is not recorded as a set-off against the "*dominium directum*" of the lord of the manor. The fact is, this right of possession is something so self-understood, that it never seems present to the mind of the legislator. The "*dominium directum*" is something quite different, for it represents an aggregation of all kinds of different rights. These rights he has to sell to the peasant, and the peasant buys them with the only thing he possesses, *viz.*, his land.

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XXVI.

PRUSSIA.

Para. 6, contd.

IX. (a). What the statesman did in Prussia in 1811 was, this: they took half or a third of the land possessed by the tenants of Prussia, and handed it over in full possession to the landlords of Prussia. The land occupied by these tenants was land on which, *except in case of devastation and in virtue of a judgment passed by a Court of Law*, the lord of the manor had no right of re-entry. What the law of 1811 did was to force the lord of the manor to sell his manorial overlordship to the copyholder for one-half or one-third of the copyhold. By this process he was put in possession of more land than he was possessed of before. What he was deprived of was labour. The tenant lost one-half or one-third of the land he possessed before, but obtained the *dominium directum* as well as the *dominium utile* over the remaining half or two-thirds; what was, however, much more important, he got back the free use of his own labour. The landlord sold labour and bought land; the tenant sold land and bought labour. All the essential features of the transaction would have remained the same even if the "*dominium directum*" of the landlord had not been passed over to the peasant, for an overlordship of this kind, deprived of its material contents, would have been a mere meaningless form, like the *dominium eminens* of the Crown in England. The "Edict for the better cultivation of the land," published on the same day as the Edict for the regulation of the relations between the lords of the manor and their peasants, provided for the better regulation of other branches of the agricultural system. The ruling idea of the "Edict for the better cultivation of the land," as of its predecessor, and indeed of the whole legislation connected with the names of Stein and Hardenberg, is to enfranchise not the owner of land merely, but likewise the land owned by him, and to remove every impediment in the way of the soil finding its way out of hands less able to cultivate it into those better able to cultivate it. * * Without this power of selling portions of his property, the proprietor is apt to sink deeper and deeper into debt, and in proportion as he does so the soil is deprived of its strength. * * But there is yet another advantage springing from this power of piecemeal alienation which is well worthy of attention, and which fills our paternal heart with especial gladness. It gives, namely, an opportunity to the so-called small folk (Kleine Leute), cottiers, gardeners, boothmen, and day-labourers, to acquire landed property, and little by little to increase it. The prospect of such acquisition will render this numerous and useful class of our subjects industrious, orderly, and saving, inasmuch as thus only will they be enabled to obtain the means necessary to the purchase of land; many of them will be able to work their way upward and to acquire property, and to make themselves remarkable for their industry. The State will acquire a new and valuable class of industrious proprietors; by the endeavour to become such, agriculture will obtain new hands, and by increased voluntary exertion, more work out of the old ones.

(b). The edict next enacts, as a supplementary measure to the "Edict for the regulation of the relations between lords of the manor," that in the case of hereditary leaseholds (Erbpächte), the services and fines may be commuted into rent-charges, and these rent-charges redeemed by a capital payment, calculated at 4 per cent.

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XXVI.

PRUSSIA.

Para. 6, contd.

X. (a). The legislation of 1850 was in the highest degree prolific; but we need only concern ourselves with the two great laws of the 2nd of March: (1) the law for the redemption of services and dues, and the regulation of the relations between the lords of manor and the peasants; (2) the law for the establishment of rent banks.

(b). The former of these laws abrogated the "*dominium directum*," or overlordship of the manor, without compensation; so that from the day of its publication all hereditary holders throughout the Prussian monarchy, irrespective of the size of their holdings, became proprietors, subject, however, to the customary services and dues, which by the further provisions of the law were commuted into fixed money rents, calculated on the average money value of the services and dues rendered and paid during a certain number of years preceding. By a further provision these rent charges were made compulsorily redeemable, either by the immediate payment of a capital equivalent to an eighteen years' purchase of the rent charge, or by a payment of $4\frac{1}{2}$ or 5 per cent. for $56\frac{1}{2}$ or $41\frac{1}{2}$ years, on a capital equivalent to 20 years' purchase of the rent-charge.

XI. (a). The law for the establishment of rent banks provided the machinery for this wholesale redemption. By it the State, through the instrumentality of the rent banks, constituted itself the broker between the peasants by whom the rents had to be paid and the landlords who had to receive them.

(b). The bank established in each district advanced to the landlords, in rent debentures paying 4 per cent. interest, a capital sum equal to 20 years' purchase of the rent. The peasant, along with his ordinary rates and taxes, paid into the hands of the district tax-collector each month one-twelfth part of a rent calculated at 5 or $4\frac{1}{2}$ per cent. on this capital sum, according as he elected to free his property from encumbrance in $41\frac{1}{2}$ or $56\frac{1}{2}$ years, the respective terms within which, at compound interest, the 1 or the $\frac{1}{2}$ per cent. paid in addition to the 4 per cent. interest on the debenture would extinguish the capital.

7. The reform of land tenures regenerated Prussia; it was brought about by the active intervention of the State, under the direction of statesmen who gained world-wide renown by their wisdom and sagacity. Among the preliminary measures of reform was a stoppage of further enhancements of rent; and among the principal means of completing the reform were the State's intervention between landlord and cultivator, for settling the terms on which the latter was to buy out the feudal rights of the former, and the State's instrumentality in promoting the formation of banks for advancing to cultivators the purchase money for redeeming their obligations to their feudal lords. The statesmen of Prussia were animated throughout their measures of reform by a deep-rooted conviction that for securing and preserving the independence of the nation, and promoting the agriculture and well-being of the country, and the moral progress and material prosperity of the people, it was indispensable that the cultivators of the land should be its proprietors.

8.—BAVARIA.

REPORT BY MR. H. P. FENTON (*20th January 1870*).APP.
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BAVARIA.
Para. 8.

I. (a). With respect to the question of the "creation of freeholds," a highly important measure (already referred to incidentally in the course of this report) bearing directly upon this question, and which may be said to have inaugurated an entirely new era as regards the tenure of land in this country, was passed by the Bavarian Legislature during the Session of 1848, and has since been the law of the land. This measure, known as the Land Charges Redemption Law ("Grund Renten Ablösungs Gesetz"), may be broadly described as having put an end to all land tenures limited by seigniorials or other rights, and established in their stead a universal system of freehold tenure.

(b). It would be superfluous to enter into an account of all the details of this complicated enactment, especially as regards the infinite variety of manorial charges and dues—dating back in many cases to a remote feudal period—with which the law had to deal, for the proper definition of which in English I can indeed not pretend to possess a sufficient knowledge of technical and legal phraseology.

(c). But the following outline will, I trust, suffice to convey an idea of the general character of this very important measure, and of the mode in which it was carried out.

II. I should premise by stating that, up to the period at which the Act in question was passed, the state of things, with reference to the tenure of land in Bavaria generally, and especially in the "old provinces," had remained (with some not very important modifications) much what it had been two or three centuries previously.

Under this state of things a large proportion of the peasant-proprietors, or more properly peasant-occupiers, had only a limited right of ownership in their lands, that is to say, they held them in some cases under the Crown, but more frequently under the so-called ground landlords ("Grund Herren"), or lords of the manor, subject to charges of various descriptions, but consisting chiefly of payments in money at fixed periods, tithes of the most varied character, fines on a change of occupancy by death, and personal servitudes in the form of a certain number of days' work, with or without the peasant's cattle, the providing of beaters for the chase, &c.

In addition to these manorial and seigniorial rights, there existed in many cases, in favour of the ground landlord, that of civil jurisdiction and police over the whole extent of the manor, the exclusive right to the game on the peasant's lands, and a variety of personal privileges and exemptions.

III. The law of 1848 effected a radical change in this state of things, its chief provisions being to the following effect:—

(1). That after the 1st October 1848, all right of civil jurisdiction and police, previously vested in the ground landlords, should cease entirely, and thenceforth be exercised exclusively by the competent Government authorities.

(2). That after the 1st January 1849, personal servitudes of every description rendered in respect of the occupancy of lands, houses, &c.,

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BAYANA.
Para. 8, contd.

should be absolutely abolished, without any indemnity being made to the ground landlord.

(3). That every peasant should be competent to buy off or commute, by means of a money payment once for all, or a yearly sum to be paid during a certain number of years, all charges, tithes, or burdens, of whatsoever description, subject to which he held his land from the ground landlord; and that, having done so, he should become the freehold proprietor of the land.

IV. The mode and conditions of this commutation were fixed as follows:—

The net annual money value of the burdens to be commuted was to be ascertained and fixed by a commission specially appointed for this purpose for each administrative district, the basis assigned for the valuation of all tithes in kind being the average of the ascertained value during the period of eighteen years from 1828 to 1845.

The value having been thus fixed in the form of an annual money payment, the peasant was in each case left at liberty to redeem this payment in one or other of the three following modes:—

(1). By paying down once for all to his landlord a sum of money equivalent to eighteen times the amount at which his yearly money payment had been assessed by the Commissioners; or,

(2). By undertaking to pay to the ground landlord annually, during a period of thirty-four years, the whole, or, during forty-three years, nine-tenths, of the annual sum so assessed, security in the form of a hypothecation on his land being given by the peasant for the due payment of that sum; or,

(3). By creating, in favour of the State, a mortgage bearing 4 per cent. interest on his land, for a sum representing (as in the first-mentioned mode of commutation) eighteen times the amount of the annual assessed payment.

In either of the two first-named alternatives, the process of commutation was complete as between the peasant and the ground landlord, and the State did not intervene further in the transaction.

In the last named alternative, the transaction was between the peasant and the State, and the latter, having obtained the mortgage on the peasant's land, undertook to indemnify the ground landlord for the dues or tithes which he relinquished.

V. For the latter purpose the law authorized the Government to create "Land Charge Redemption Debentures," bearing 4 per cent. interest, and to make over to each ground landlord a sum, in these debentures, reckoned at their full par value, equal to twenty times the annual value, as fixed by the Commissioners, of the land charges or tithes to be commuted.

It will thus be seen that, whilst the peasants were permitted to compound for their land burdens, by means of mortgages created in favour of the Government, on the basis of eighteen years' purchase of those burdens, the Government undertook to indemnify the ground landlords on the basis of twenty years' purchase, the State having been consequently a loser under this arrangement to the extent of the difference between the two rates assumed.

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BAVARIA.

Para. 8, contd.

VI. The law of 1848 further provided that a sinking fund for the voluntary amortization of the peasant's Land Charge Redemption Mortgages should be established, and that the payments made annually by the peasants as contributions towards that fund should be devoted to the redemption, every year, of a corresponding amount of the debentures issued by the Government as indemnity to the ground landlords.

VII. I have been unable to obtain any estimate of the proportion in which the peasants availed themselves of the option given them of compounding for their land burdens by the payment down, once for all, of the sum representing the capitalized value of those burdens; or of commuting them, by undertaking the annual payment; as assessed by the Commissioners, during a fixed period, no public record having been kept of these transactions; but there is reason to believe that no great number of peasants adopted either of the above-mentioned courses, and that, practically, the great operation of commutation may be considered as having been carried into effect on the system of mortgages created by the peasants in favour of the State, and indemnity made to the ground landlords by the State in the form of Government debentures.

VIII. The magnitude of the whole operation, so far as it came under the supervision of the Government, may be gathered from the following details, showing the sum of money it involved, which have been obligingly furnished to me by the Bavarian Department of Finance.

The aggregate sum represented by the mortgages created by the peasants in favour of the State was 108,581,329 florins, or £9,048,444, and the total amount for which Government debentures were issued as indemnity to the landlords—and which constitute at the present time the so-called "Land Charge Redemption Debt" of Bavaria—was 113,634,000 florins, or £9,569,500.

To these sums, representing the extent of the operation as carried out in this form between peasants and private individuals, must be added the capitalized value, as fixed by the Commissioners, of the charges on the land held by peasants under the Crown, which may be assumed as somewhat above 100,000,000 florins, the annual revenue derived by the Crown from this source being about 4,500,000 florins.

The aggregate capitalized value (on the basis of eighteen years' purchase) of the land burdens commuted under the law of 1848 may therefore be set down (exclusively of the burdens commuted by direct transactions between peasant and ground landlord) in round numbers at 220,000,000 florins, or about £18,330,000.

It may be well to add that, up to the end of the year 1868, the amount of the peasant mortgages assigned to the State, and that of the "Land Charge Redemption Government Debentures," originally issued, had been reduced by foreclosure or amortization to £7,362,955 and £8,009,608 respectively.

IX. In conclusion I may state that the law of 1848 above described having (as already explained) abolished, or established the right of abolishing, every description of limited tenure of land, and introduced a general system of freeholds, there are no longer any tenures in Bavaria resembling the copyholds of England.

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—
BAYARIA.

—
PARA. 8, contd.

It appears that towards the close of the eighteenth century and during the nineteenth century every State of note in Continental Europe liberated the cultivators of land from the feudal services and other burdens which, till then, had deprived them of the fruits of their industry. In France the liberation was effected by a revolution; in the other countries, by the active intervention of the State, and the careful thought and bold and wise legislation of statesmen. During the same period, the status of the cultivating proprietors in Bengal has been tending towards tenancy-at-will and cottierism.

APPENDIX XXVII.

SERFDOM IN RUSSIA, AND ITS ABOLITION.

(Extract from Mr. D. Mackenzie Wallace's Book on Russia, 1877.)

(1). (a). Ivan's household was a good specimen of the Russian peasant family of the old type. Previous to the emancipation in 1861, there were many households of this kind, containing the representatives of three generations. All the members, young and old, lived together, in patriarchal fashion, under the direction and authority of the head of the house, called usually *khozäin*, that is to say, administrator; or, in some districts, *bolshäk*, which means literally "the big one." Generally speaking, this important position was occupied by the grandfather, or, if he was dead, by the eldest brother; but this rule was not very strictly observed. If, for instance, the grandfather became infirm, or if the eldest brother was incapacitated by disorderly habits or other cause, the place of authority was taken by some other member—it might be by a woman, who was a good manager, and possessed the greatest moral influence. * *

(b). The house, with its appurtenances, the cattle, the agricultural implements, the grain and other products, the money gained from the sale of these products—in a word, the house and nearly everything it contained—was the joint-property of the family. Hence nothing was bought or sold by any member—not even by the 'big one' himself, unless he possessed an unusual amount of authority—without the express or tacit consent of the other grown-up males; and all the money that was earned was put into the common purse. When one of the sons left home to work elsewhere, he was expected to bring or send home all his earnings, except what he required for food, lodgings, and other necessary expenses; and if he understood the word "necessary" in too lax a sense, he had to listen to very plain-spoken reproaches when he returned. During his absence, which might last a whole year or several years, his wife and children remained in the house as before; and the money which he earned was probably devoted to the payment of the family taxes.

(c). The peasant household of the old type is thus a primitive labour association, of which the members have all things in common; and it is not a little remarkable that the peasant conceives it as such rather than as a family. This is shown by the customary terminology and by the law of inheritance. The head of the house is not called by any word corresponding to *pater-familias*, but is termed, as I have said, *khozäin*, or administrator, a word that is applied equally to a farmer, a shop-keeper, or the head of an industrial undertaking, and does not at all convey the idea of blood-relationship.

(d). The law of inheritance is likewise based on this conception. When a household is broken up, the degree of blood-relationship is not taken into consideration in the distribution of the property. All the adult male members share equally. Illegitimate and adopted sons, if they

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have contributed their share of labour, have the same rights as the sons born in lawful wedlock. The married daughter, on the contrary—being regarded as belonging to her husband's family—and the son who has previously separated himself from the household, are excluded from the succession. Strictly speaking there is no succession or inheritance whatever, except as regards the wearing apparel, and any little personal effects of a similar kind. The house and all that it contains belong, not to the *khozain*, but to the little household community; and consequently, when the *khozain* dies, and the community is broken up, the members do not inherit, but merely appropriate individually what they had hitherto possessed collectively. Thus there is properly no inheritance or succession, but simply liquidation and distribution of the property among the members.

Ibid., page 139.

(2). (a). The custom of living in large families has many decided economic advantages. Each adult peasant possesses, as I shall hereafter explain, a share of the communal land; but this share is not sufficient to occupy all his time and working power. One married pair can easily cultivate two shares—at least in all provinces where land is not very abundant. Now, if a family is composed of two married couples, one of the men can go elsewhere and earn money, whilst the other, with his wife and sister-in-law, can cultivate the two combined shares of land. If, on the contrary, the family consists merely of one pair, with their children, the man must either remain at home, in which case he may have difficulty in finding work for the whole of his time, or he must leave home, and entrust the cultivation of his share of the land to his wife, whose time must be in great part devoted to domestic affairs.

(b). In the time of serfage the proprietors clearly perceived these and similar advantages, and compelled their serfs to live together in large families. No family could be broken up without the proprietor's consent, and this consent was not easily obtained, unless the family had assumed quite abnormal proportions, and was permanently disturbed by domestic dissension. In the matrimonial affairs of the serfs, too, the majority of the proprietors systematically exercised a certain supervision, not necessarily from any paltry meddling spirit, but because their material interests were thereby affected. A proprietor would not, for instance, allow the daughter of one of his serfs to marry a serf belonging to another proprietor—because he would thereby lose a female labourer—unless some compensation were offered. The compensation might be a sum of money, or the affair might be arranged on the principle of reciprocity, by the master of the bridegroom allowing one of his female serfs to marry a serf belonging to the master of the bride.

(c). In these large families, the evil of family dissension exists in an aggravated form. The females comprising a large household not only live together, but have nearly all things in common. Each member works, not for himself, but for the household, and all that he earns is expected to go into the family treasury. The arrangement almost inevitably leads to one of two results—either there are continual dissensions, or order is preserved by a powerful domestic tyranny, infinitely worse than serfage.

(d). It was quite natural, therefore, that when the authority of the landed proprietors was abolished in 1861, the large peasant families

almost all fell to pieces. The arbitrary rule of the *khozūin* was based on and maintained by the arbitrary rule of the proprietor, and both naturally fell together. Households like that of our friend Ivan have been preserved only in exceptional cases, where the head of the house happened to possess an unusual amount of moral influence over the other members.

(e). This change has unquestionably had a prejudicial influence on the material welfare of the peasantry; but it must have added considerably to their domestic comfort, and can scarcely fail to produce good moral results. For the present, however, the evil consequences are by far the most prominent. Every married peasant strives to have a house of his own, and many of them, in order to defray the necessary expenses, have been obliged to contract debts. This is a very serious matter. Even if the peasants could obtain money at 5 or 6 per cent., the position of the debtors would be bad enough; but it is in reality much worse, for the village usurers consider 20 or 25 per cent. a by no means exorbitant rate of interest. Thus the peasant who contracts debts has a hard struggle to pay the interest in ordinary times, and when some misfortune overtakes him—when, for instance, the harvest is bad or his horse is stolen—he probably falls hopelessly into pecuniary embarrassments. I have seen peasants not specially addicted to drunkenness or other ruinous habits, sink to a helpless state of insolvency. Fortunately for such insolvent debtors, they are treated by the law with extreme leniency. Their houses, their share of the common land, their agricultural implements, their horse—in a word, all that is necessary for their subsistence—is exempt from sequestration. The Commune may, however, subject them to corporal punishment if they do not pay their taxes; and in many other respects the position of a peasant, who is protected against utter destitution merely by the law, is very far from being enviable. * * *

(3). Such is the ordinary life of the peasants who live by agriculture; but many of the villagers live occasionally or permanently in towns. Chapter VII, pages 153-54.
Probably the majority of the peasants in this part of Russia have at some period of their lives gained a living in some other part of the country. Many of the absentees spend regularly a part of the year at home, whilst others visit their families only occasionally, and, it may be, at long intervals. In no case, however, do they sever their connection with their native village. The artizan who goes to work in a distant town never takes his wife and family with him; and even the man who becomes a rich merchant in Moscow or St. Petersburg remains probably a member of the Village Commune, and pays his share of the taxes, though he does not enjoy any of the corresponding privileges. Once I remember asking a rich man of this kind, the proprietor of several large valuable houses in St. Petersburg, why he did not free himself from all connection with his native Commune with which he had no longer any common interests. His answer was, "It is all very well to be free, and I don't want anything from the Commune now; but my old father lives there, my mother is buried there, and I like to go back to the old place sometimes. Besides, I have children, and our affairs are commercial. Who knows but my children may be very glad some day to have a share of the communal land?"

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VILLAGE COM-
MUNE.Chapter VIII,
page 183.

(4). (a). The peasant family of the old type is, as we have just seen, a kind of primitive association, in which the members have nearly all things in common. The village may be roughly described as a primitive association on a larger scale.

(b). Between these two social units there are many points of analogy. In both there are common interests and common responsibilities. In both there is a principal personage, who is, in a certain sense, ruler within, and representative as regards the outside world; in the one case called *khozain*, or head of the household, and in the other *starosta*, or village elder. In both the authority of the ruler is limited; in the one case by the adult members of the family, and in the other by the heads of households. In both there is a certain amount of common property; in the one case the house and nearly all that it contains, and in the other the arable land and pasturage. In both cases there is a certain amount of common responsibility; in the one case for all the debts, and in the other for all the taxes and communal obligations. And both are protected, to a certain extent, against the ordinary legal consequences of insolvency; for the family cannot be deprived of its house or necessary agricultural implements, and the Commune cannot be deprived of its land by importunate creditors.

(c). On the other hand, there are many important points of contrast. The Commune is of course much larger than the family, and the mutual relations of its members are by no means so closely interwoven. The members of a family all farm together, and those of them who earn money from other sources are expected to put their savings into the common purse; whilst the households composing a Commune farm independently, and pay into the common treasury only a certain fixed sum.

Chapter VIII,
pages 184-85.

(d). From these brief remarks the reader will at once perceive that a Russian village is something very different from a village in our sense of the term, and that the villagers are bound together by ties quite unknown to the English rural population. The families in an English village are isolated as to their respective interests and pursuits. But amongst the families composing a Russian village such a state of isolation is impossible. The heads of households must often meet together, and consult in the village assembly, and their daily occupations must be influenced by the communal decrees. They cannot begin to mow the hay or plough the fallow field until the village assembly has passed a resolution on the subject. If a peasant becomes a drunkard, or takes some equally efficient means to become insolvent, every family in the village has a right to complain, not merely in the interests of public morality, but from selfish motives, because all the families are collectively responsible for his taxes. For the same reason, no peasant can permanently leave the village without the consent of the Commune; and this consent will not be granted until the applicant gives satisfactory security for the fulfilment of all his actual and future liabilities. If a peasant wishes to go away for a short time, in order to work elsewhere, he must obtain a written permission, which serves him as a passport during his absence; and he may be recalled at any moment by a communal decree. In reality, he is rarely recalled so long as he sends home regularly the full amount of his taxes, including the dues which he has to pay for the temporary passport; but, sometimes, the Commune

use the power of recall for the purpose of extorting money from the absent member. If it becomes known, for instance, that an absent member receives a good salary in one of the towns, he may one day receive a formal order to return at once to his native village; and be informed at the same time unofficially that his presence will be dispensed with if he will send to the Commune a certain amount of money. The money thus sent is generally used for convivial purposes. * *

(e). In order to understand the Russian village system, the reader must bear in mind these two important facts—the arable land and the pasture land belong not to the individual houses, but to the Commune; and all the households are collectively and individually responsible for the entire sum which the Commune has to pay annually into the imperial treasury.

(5). (a). According to the theory of government and administration, all male peasants, in every part of the empire, are inscribed in census lists, which form the basis of the direct taxation. These lists are revised at irregular intervals, and all males alive at the time of the “revision,” from the new-born babe to the centenarian, are duly inscribed. Each Commune has a list of this kind, and pays to the Government an annual sum proportionate to the number of names which the list contains, or, in popular language, according to the number of “revision souls.” During the intervals between the revisions, the financial authorities take no notice of the births and deaths. A Commune, which has a hundred male members at the time of the revision, may have, in a few years, considerably more or considerably less than that number; but it has to pay taxes for a hundred members all the same, until a new revision is made for the whole empire.

(b). Now, in Russia, so far at least as the rural population is concerned, the payment of taxes is inseparably connected with the possession of land. Every peasant who pays taxes is supposed to have a share of the arable land and pasturage belonging to the Commune. If the communal revision lists contain a hundred names, the communal land ought to be divided into a hundred shares, and each “revision soul” should enjoy his share in return for the taxes which he pays.

(c). Nevertheless, the taxes are personal, and are calculated according to the number of male “souls,” and the Government does not take the trouble to enquire how the communal land is distributed. The Commune has to pay into the imperial treasury a fixed yearly sum, according to the number of its “revision souls,” and distributes the land among its members as it thinks best.

(d). How, then, does the Commune distribute the land? To this question it is impossible to give a definite general reply, because each Commune acts as it pleases. Some act strictly according to the theory. These divide their land at the time of the revision into a number of portions or shares corresponding to the number of revision souls which it contains. This is, from the administrative point of view, by far the simplest system. The census list determines how much land each family will enjoy, and the existing tenures are disturbed only by the revisions, which take place at irregular intervals, on an average about fifteen years each for the ten revisions since 1719, a term which may be regarded as a tolerably long lease.

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(e). This system has serious defects; for example, let us suppose two families, each containing at the time of the revision five male members. According to the census list, these two families are equal, and ought to receive equal shares of the land; but, in reality, it may happen that the one contains a father in the prime of life, and four able-bodied sons, whilst the other contains a widow and four little boys. The wants and working power of these two families are, of course, very different; and if the above system of distribution be applied, the man with four sons and a goodly supply of grandchildren will probably find that he has too little land, whilst the widow, with her five little boys, will find it difficult to cultivate the five shares allotted to her, and utterly impossible to pay the corresponding amount of taxation; for in all cases it must be remembered the communal burdens are distributed in the same proportion as the land.

(f). Hence, the division according to the theory is impracticable in Communes where the soil is so poor and the tax so heavy that the possession of land is often not a privilege, but a burden.

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(g). In the southern provinces, where the soil is fertile, and the taxes do not exceed the normal rent of land, the process of division and allotment is comparatively simple. Here, each peasant desires to get as much land as possible, and consequently each household demands all the land to which it is entitled; that is to say, a number of shares equal to the number of its members inscribed in the last revision list. The Assembly has, therefore, no difficult questions to decide. The communal revision list determines the number of shares into which the land must be divided, and the number of shares to be allotted to each family. The only difficulty likely to arise is as to which particular shares a particular family shall receive; and this difficulty is commonly obviated by the custom of casting lots.

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(h). Very different is the process of division and allotment in many Communes of the northern provinces. Here the soil is often very unfertile, and the taxes exceed the normal rent; and consequently it may happen that the peasants strive to have as little land as possible, while the Communes are forced to adopt the expedient of allotting the land; not according to the number of revision souls, but according to the working-power of the families. Thus, in the instance supposed in (e), the widow would receive perhaps two shares, and the large household containing five workers would receive perhaps seven or eight. Since the breaking up of the large families, such inequality as I have supposed is of course rare; but inequality of a less extreme kind does still occur, and justifies a departure from the system of allotment according to the revision lists.

(6). (a). In the preceding pages I have repeatedly spoken about shares of the communal land. To prevent misconception, I must explain carefully what this expression means. A share does not mean simply a plot or parcel of land; on the contrary, it always contains at least four, and may contain a large number of distinct plots. * * Communal land in Russia is of three kinds—the land on which the village is built, the arable land, and the meadow or hay-field. On the first of these each family possesses a house and garden, which are the hereditary property of the family, and are never affected by the periodical redistributions. The other two kinds are both subject to redistribution, but on somewhat different principles.

(b). The whole of the communal arable land is, first of all, divided into three fields, to suit the triennial rotation of crops already described; and each field is divided into a number of long narrow strips, corresponding to the number of male members in the Commune, as nearly as possible equal to each other in area and quality. Sometimes it is necessary to divide the field into several portions, according to the quality of the soil, and then to sub-divide each of these portions into the requisite number of strips. Thus, in all cases every household possesses at least one strip in each field; and in those cases where sub-division is necessary, every household possesses a strip in each of the portions into which the field is sub-divided. This complicated process of division and sub-division is accomplished by the peasants themselves, with the aid of simple measuring rods, and the accuracy of the result is truly marvellous.

(c). The meadow, which is reserved for the production of hay, is divided into the same number of shares as the arable land. There, however, the division and distribution take place, not at irregular intervals, but annually. Every year, on a day fixed by the Assembly, the villagers proceed in a body to this part of their property, and divide it into the requisite number of portions. Lots are then cast, and each family at once mows the portions allotted to it. In some Communes the meadow is mown by all the peasants in common, and the hay afterwards distributed by lot among the families; but this system is by no means so frequently used.

(d). As the whole of the communal land thus resembles to some extent a big farm, it is necessary to make certain rules concerning cultivation. A family may sow what it likes in the land allotted to it, but all families must at least conform to the accepted system of rotation. In like manner, a family cannot begin the autumn ploughing before the appointed time, because it would thereby interfere with the rights of the other families who use the fallow field as pasturage. * * *

(7). (a). In this northern region, as in other parts of Russia, a very large portion of the land, perhaps as much as one-half, belongs to the State. The peasants living on this land had no masters, and were governed by a special branch of the imperial administration. In a certain sense they were serfs, for they were not allowed to change their official domicile; but practically they enjoyed a very large amount of liberty. By paying a small sum for a passport, they could leave their villages for an indefinite period, and so long as they paid regularly their taxes and dues, they were in little danger of being molested. Many of them, though officially inscribed in their native villages, lived permanently in the towns, and not a few of them succeeded in amassing large fortunes.

(b). Of the remaining land, a considerable portion belonged to rich nobles, who rarely or never visited their estates, and left the management of them either to the serfs themselves or to a steward, who acted according to a code of instructions. On these estates the position of the serfs was very similar to that of the State peasants. They had their communal land, which they distributed among themselves as they thought fit, and enjoyed the remainder of the arable land in return for a fixed yearly rent.

(c). Some proprietors, however, lived on their estates and farmed on their own account; and here the condition of the serfs was somewhat

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different. A considerable number of these, perhaps as many as 10 per cent., were, properly speaking, not serfs at all, but rather domestic slaves, who fulfilled the functions of coachmen, grooms, gardeners, game-keepers, cooks, lackeys, and the like. Their wives and daughters acted as nurses, domestic servants, ladies'-maids, and seamstresses. If the master organised a private theatre or orchestra, the actors or musicians were drawn from this class. These serfs lived in the mansion or the immediate vicinity, possessed no land, except, perhaps, a little plot for a kitchen garden, and were fed and clothed by the master. Their number was generally out of all proportion to the amount of work they had to perform, and consequently they were always imbued with an hereditary spirit of indolence, and performed lazily and carelessly what they had to do. On the other hand, they were often sincerely attached to the family they served, and occasionally proved by acts their fidelity and attachment.

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servile labourers
under Indian
village system.

(8). (a). In the earliest period of Russian history the rural population was composed of three distinct classes. At the bottom of the scale stood the slaves, who were very numerous. Their numbers were continually augmented by prisoners of war, by freemen who voluntarily sold themselves as slaves, by insolvent debtors, and by certain categories of criminals.

Pykasht ryots.

Immediately above the slaves were the free agricultural labourers, who had no permanent domicile, but wandered about the country, and settled temporarily where they happened to find work and satisfactory remuneration.

Khloodkasht
ryots.

In the third place, distinct from these two classes, and in some respects higher in the social scale, were the peasants, properly so called. These peasants proper, who may be roughly described as small farmers or cottiers, were distinguished from the free agricultural labourers in two respects; they were possessors of land in property or usufruct, and they were members of a rural Commune.

Village com-
munities.

(b). The Communes were free primitive corporations, which elected their office-bearers from among the heads of families, and sent delegates to act as judges or assessors in the Prince's Court. Some of the Communes possessed land of their own, whilst others were settled on the estates of the landed proprietors, or on the extensive domains of the monasteries. In the latter case, the peasant paid a fixed yearly rent in money, in produce, or in labour, according to the terms of his contract with the proprietor or the monastery; but he did not thereby sacrifice in any way his personal liberty. As soon as he had fulfilled the engagements stipulated in the contract, and settled accounts with the owner of the land, he was free to change his domicile as he pleased.

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(9). If we turn now from these early times to the eighteenth century, we find that the position of the rural population has entirely changed in the interval. The distinction between slaves, agricultural labourers, and peasants, has completely disappeared. All three categories have melted together into a common class called serfs, who are regarded as the property of the landed proprietors or of the State. "The proprietors sell their peasants and domestic servants not even in families, but one by one, like cattle, as is done nowhere else in the whole world, from which practice there is not a little wailing."¹ And yet the Government,

whilst professing to regret the existence of the practice, takes no energetic measures to prevent it. On the contrary, it deprives the serfs of all legal protection, and expressly commands that if any serf shall dare to present a petition against his master, he shall be punished with the knout, and transported for life to the mines of Nertchinsk. How did this important change take place, and how is it to be explained?

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(10). In ancient times, the rural population was completely free, and every peasant might change his domicile on St. George's day, that is to say, at the end of the agricultural year. But there appeared at a very early period, long before the reign of Boris Godunof, a decided tendency in the princes, in the proprietors, and in the Communes, to prevent emigration. This tendency will be easily understood if we remember that land without labourers is useless, and that in Russia at that time the population was small in comparison with the amount of reclaimed and easily reclaimable land. The prince desired to have as many inhabitants as possible in his principality, because the amount of his regular revenues depended on the number of the population. The landed proprietor desired to have as many peasants as possible on his estate, to till for him the land which he reserved for his own use, and to pay him for the remainder a yearly rent in money, produce, or labour. The free Communes desired to have a number of members sufficient to keep the whole of the communal land under cultivation, because each Commune had to pay yearly to the prince a fixed sum in money or agricultural produce, and the greater the number of able-bodied members, the less each individual had to pay. To use the language of political economy, the princes, the landed proprietors, and the free Communes, all appeared as buyers in the labour market; and as the demand was far in excess of the supply, there was naturally a brisk competition.* * In old Russia regularly organized emigration for procuring labourers was of course impossible, and consequently illegal or violent measures were not the exception, but the rule. The object of the frequent military expeditions was the acquisition of prisoners of war, who were commonly transformed into slaves by their captors.* * A similar method was sometimes employed for the acquisition of free peasants; the more powerful proprietors organized kidnapping expeditions, and carried off by force the peasants settled on the land of their weaker neighbours.

(11). Under these circumstances, it was only natural that those who possessed this valuable commodity should do all in their power to keep it. Many, if not all, of the free Communes adopted the simple measure of refusing to allow a member to depart until he had found some one to take his place. The proprietors never, so far as we know, laid down formally such a principle, but in practice they did all in their power to retain the peasants actually settled on their estates. For this purpose some simply employed force, whilst others acted under cover of legal formalities. The peasant who accepted land from a proprietor rarely brought with him the necessary implements, cattle, and capital, to begin at once his occupations, and to feed himself and his family till the ensuing harvest. He was obliged, therefore, to borrow from his landlord, and the debt thus contracted was easily converted into a means of preventing his departure, if he wished to change his domicile.

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The proprietors were the capitalists of the time. Frequent bad harvests, plagues, fires, military raids, and similar misfortunes often reduced even prosperous peasants to beggary. The *muzhik* was probably then, as now, only too ready to accept a loan, without taking the necessary precautions for repaying it. The laws relating to debt were terribly severe, and there was no powerful judicial organization to protect the weak. If we remember all this, we shall not be surprised to learn that a considerable part of the peasantry were practically serfs before serfage was recognized by law.

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(12). (a). So long as the country was broken up into independent principalities, separated from each other by imaginary boundaries, and each land-owner was almost an independent prince in his estate, the peasants easily found a remedy for these abuses in flight. They fled to a neighbouring proprietor, who could protect them from their former landlord and his claims; or they took refuge in a neighbouring principality, where they were, of course, still safer. All this was changed when the independent principalities were transformed into the Tsardom of Muscovy. The Tsars had new reasons for opposing the migration of the peasants, and new means for preventing it. The old princes had simply given grants of land to those who served them, and left the grantee to do with his land what seemed good to him; the Tsar, on the contrary, gave to those who served them merely the usufruct of a certain quantity of land, and carefully proportioned the quantity to the rank and obligations of the receiver. In this change there was plainly a new reason for fixing the peasants to the soil. The real value of a grant depended, not so much on the amount of land, as on the number of peasants settled on it; and hence any migration of the population was tantamount to a removal of the ancient landmarks; that is to say, a disturbance of the arrangements made by the Tsar. Suppose, for instance, that the Tsar granted to a Boyar or some lesser dignitary an estate on which were settled ten peasant families, and that afterwards five of these emigrated to neighbouring proprietors. In this case the recipient might justly complain that he lost half of his estate, though the amount of land was in no way diminished, and that he was consequently unable to fulfil his obligations. Such complaints would be rarely, if ever, made by the great dignitaries, for they had the means of attracting peasants to their estates; but the small proprietors had good reason to complain, and the Tsar was bound to remove their grievances. The attaching of the peasants to the soil was in fact the natural consequence of feudal tenures—an integral part of the Muscovite political system. The Tsar compelled the nobles to serve him, and was unable to pay them in money. He was obliged, therefore, to procure for them some other means of livelihood. Evidently the simplest method of solving the difficulty was to give them land, with a certain number of labourers; in other words, to introduce serfage.

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(b). Towards the free Communes the Tsars had to act in the same way, for similar reasons. The Communes, like the nobles, had obligations to the sovereign, and could not fulfil them if the peasants were allowed to migrate from one locality to another. They were, in a certain sense, the property of the Tsar, and it was only natural that the Tsar should do for himself what he had done for his nobles.

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Government
during and since
the permanent
settlement.
Zemindars under
the permanent
settlement.
Haftum and
punjum.

(c). With these new reasons for fixing the peasants to the soil came, as has been said, new means of preventing migration. Formerly it was an easy matter to flee to a neighbouring principality, but now all the principalities were combined under one ruler, and the foundations of a centralized administration were laid. Severe fugitive laws were issued against those who attempted to change their domicile, and against the proprietors who should harbour the run-aways. Unless the peasant chose to face the difficulties of "squatting" in the inhospitable northern forests, or resolved to brave the dangers of the steppe, he could nowhere escape the heavy hand of Moscow.

(d). The indirect consequences of thus attaching the peasants to the soil did not at once become apparent. The serf¹ retained all the civil rights he had hitherto enjoyed, except that of changing his domicile. He could still appear before the courts of law as a free man, freely engage in trade and industry, enter into all manner of contracts, and rent land for cultivation. Even the restriction on the liberty of his movements was not so burdensome as it may at first sight appear; for change of domicile had never been very frequent among the peasantry, and the force of custom prevented the proprietors² for a time from making any important alterations in the existing contracts.

(e). As time wore on, however, the change in the legal relation between the two classes became apparent in real life. In attaching the peasantry to the soil, the Government had been so thoroughly engrossed³ with the direct financial aim, that it entirely overlooked,³ or wilfully shut its eyes³ to the ulterior consequences which must necessarily flow from the policy it adopted. It was evident that as soon as the relation between proprietor and peasant was removed from the region of voluntary contract by being rendered indissoluble, the weaker of the two parties legally tied together⁴ must fall completely under the power of the stronger, unless energetically protected by the law and the administration. And yet the Government paid no attention to this inevitable consequence. So far from endeavouring to protect the peasantry from the oppression of the proprietors, it did not even determine by law the mutual obligations which ought to exist between the two classes. Taking advantage of this omission, the proprietors soon began to impose whatever obligations they thought fit; and as they had no legal means of enforcing fulfilment, they gradually introduced a patriarchal jurisdiction, similar to that which they exercised over their slaves, with fines and corporal punishment as means of coercion. From this they ere long proceeded a step further, and began to sell their peasants without the land on which they were settled. At first this was merely a flagrant abuse, unsanctioned by law, for the peasant had never been declared the private property of the landed proprietor; but the Government tacitly sanctioned the practice, and even exacted dues on such sales, as on the sale of slaves. Finally, the right to sell peasants without land was formally recognized by various imperial *ukases*.

¹ Ryots at the time of the permanent settlement.

² Zemindars for a very few years after the permanent settlement.

³ Lord Cornwallis at the permanent settlement.

⁴ Zemindar and ryot since the permanent settlement.

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Village system in
Lower Bengal.
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(13). The old communal organization still existed, and had never been legally deprived of its authority, but it was now powerless to protect the members. The proprietor could easily overcome any active resistance by selling or converting into domestic servants the peasants who dared to oppose his will.

(14). The peasantry had thus sunk to the condition of serfs, practically deprived of legal protection, and subject to the arbitrary will of the proprietors; but they were still in some respects legally and actually distinguished from the slaves on the one hand and the "free wandering people" on the other. These distinctions were obliterated by Peter the Great and his immediate successors. Peter was always on the look-out for some new object of taxation. When looking about for this purpose, his eye naturally fell on the slaves, the domestic servants, and the free agricultural labourers. None of these classes paid taxes—a fact which stood in flagrant contradiction with his fundamental principle of polity, that every subject should in some way serve the State. He caused, therefore, a national census to be taken, in which all the various classes of the rural population—slaves, domestic servants, agricultural labourers, peasants—should be inscribed in one category; and he imposed equally on all the members of this category a poll-tax, in lieu of the former land-tax, which had lain exclusively on the peasants. To facilitate the collection of this tax, the proprietors were made responsible for their serfs; and the "free wandering people," who did not wish to enter the army, were ordered, under pain of being sent to the galleys, to inscribe themselves as members of a Commune, or as serfs to some proprietor.

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(15). These measures had a considerable influence, if not on the actual position of the peasantry, at least on the legal conceptions regarding them. By making the proprietor pay the poll-tax for his serfs, as if they were slaves or cattle, the law seemed to sanction the idea that they were part of his goods and chattels. Besides this, it introduced the entirely new principle, that any member of the rural population not legally attached to the land or to a proprietor, should be regarded as a vagrant, and treated accordingly. Thus the principle, that every subject should in some way serve the State, had found its complete realization. There was no longer any room in Russia for free men.

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(16). * * The nobles could reduce to serfage the peasants settled on their estates, but they could not take possession of the free Communes, because such an appropriation would have infringed the rights and diminished the revenues of the Tsar. * * At the date of the emancipation (1861), by far the greater part of the territory belonged to the State, and one-half of the rural population were so-called State peasants.

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(17). Regarding the condition of these State peasants, or peasants of the demesnes, as they are sometimes called, I may say briefly that they were, in a certain sense, serfs, being attached to the soil like the others; but their condition was, as a rule, somewhat better than the serfs, in the narrower acceptation of the term. They had to suffer much from the tyranny and extortion of the special administration under which they lived, but they had more land and more liberty than was commonly enjoyed on the estates of resident proprietors, and their position was much less precarious.

18. The dues paid by the serfs were of three kinds, labour, money, and farm produce, chiefly eggs, chickens, lambs, mushrooms, wild berries, and linen cloth. This last was unimportant. Respecting the other two—

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(a). When a proprietor had abundance of fertile land, and wished to farm on his own account, he commonly demanded from his serfs as much labour as possible. * * According to the famous manifesto of Paul I, the peasant could not be compelled to work more than three days in the week; but this law was by no means universally observed, and those who did observe it had various methods of applying it.

(b). When a land-owner had more serf labour at his disposal than he required for the cultivation of his fields, he put the superfluous serfs "*on obrók*;" that is to say, he allowed them to go and work where they pleased on condition of paying him a fixed yearly sum.

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(c). Sometimes the proprietor did not farm at all on his own account, in which case he put all the serfs "*on obrók*," and generally gave to the Commune in usufruct the whole of the arable land and pasturage. In this way the *mir* played the part of a tenant.

19. According to the most recent data of the population in European Russia, the exact numbers are—

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Peasants—

State	23,138,191
On the lands of proprietors (formerly serfs)	23,022,390
Of the appanage and other departments	...	...	...	3,326,084
				<hr/>
				49,486,665
Remainder of population	...	...	...	11,422,644
				<hr/>
Entire population	...	...	...	60,909,309
				<hr/>

20. (a). From an historical review of the question of serfage, the Emperor drew the conclusion that "the autocratic power created serfage, and the autocratic power ought to abolish it." On February 19th, 1861, the law was signed, and by that Act more than 20 millions of serfs (or 40 millions, including State peasants) were liberated. A manifesto containing the fundamental principles of the law were at once sent all over the country, and an order was given that it should be read in all the churches. The three fundamental principles laid down by the law were—

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(1). That the serfs should at once receive the civil rights of the free rural classes, and that the authority of the proprietor should be replaced by communal self-government.

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(2). That the rural Communes should, as far as possible, retain the land they actually held, and should in return pay to the proprietor certain yearly dues, in money or labour.

(3). That the Government should by means of credit assist the Communes to redeem these dues, or, in other words, to purchase the lands ceded to them in usufruct.

(b). With regard to the domestic serfs, it was enacted that they should continue to serve their masters during two years, and that there—

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after they should be completely free, but they should have no claim to a share of the land.

21. The work of concluding contracts for the redemption of the dues, or, in other words, for the purchase of the land ceded in perpetual usufruct, proceeded slowly, and is, in fact, still going on. The arrangement was as follows: The dues were capitalized at 6 per cent., and the Government paid at once to the proprietors four-fifths of the whole sum. The peasants were to pay to the proprietor the remaining fifth, either at once or in instalments, and to the Government 6 per cent. for forty-nine years on the sum advanced. The proprietors willingly adopted this arrangement, for it provided them with a sum of ready money, and freed them from the difficult task of collecting dues. But the peasants did not show much desire to undertake the operation. Some of them expected a second emancipation, and those who did not take this possibility into their calculations, were little disposed to make present sacrifices for distant prospective advantages which would not be realized for half a century. In most cases, the proprietor was obliged to remit, in whole or in part, the fifth which was to be paid by the peasants. Many Communes refused to undertake the operation on any conditions, and in consequence of this not a few proprietors demanded the so-called obligatory redemption, according to which they accepted the four-fifths from the Government as full payment, and the operation was thus effected without the peasants being consulted. The total number of *male* serfs emancipated was about nine millions and three-quarters; and of these, only about seven millions and a quarter had already, at the beginning of 1875, made redemption contracts. Of the contracts signed at that time, about 63 per cent. were "obligatory."

22. The serfs were thus not only liberated, but also made possessors of land, and put on the road to becoming communal proprietors, and the old communal institutions were preserved and developed.

23. One part of the recent legislation, elaborated with a view to preserve the Commune, has, in reality, dealt a serious blow at the fundamental principle of the institution. By the law of 1861, the Commune is enabled to redeem the dues, and become absolute proprietor of the land. This is effected by a series of yearly payments extending over nearly half a century, and each family contributes to these payments according to the amount of land which it possesses. Now the question is, will these peasants, who have been paying for a certain definite amount of land, willingly submit to a redistribution by which they will receive less than the amount for which they have paid? I think not. The redemption of the dues—or, in other words, the purchase of the land—has already considerably modified the peasants' conceptions of communal property; and it may be remarked that in those Communes which have undertaken the redemption operation, redistributions have become rare, or have entirely disappeared. This important fact seems to have been hitherto entirely overlooked.

24. (a). In the Northern Agricultural Zone, the soil was poor, and so much exhausted that it did not give a fair remuneration for the labour expended on it. So far, therefore, as the proprietors were concerned, agriculture was founded on the artificial basis of serf labour. Thus the proprietors, in being deprived of serf labour, were deprived of their most

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valuable possession; but they were partly indemnified for this loss by the annual dues, which greatly exceeded the normal rent of the land ceded to the Communes. In the central part of this region, moreover, the proprietor no longer employed all his serfs for agriculture, but allowed a large part of them to gain a living by other occupations, on condition of their paying him a fixed yearly sum (*obrok*) as a substitute for the field labour which he did not require. For such proprietors, the emancipation of the serfs without compensation would, of course, have been ruinous. To prevent this, it was decided that all the peasants—even those who lived by non-agricultural occupations—should be obliged to accept land, and to pay for it dues exceeding the normal rent.

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(b). Thus, we see in the Northern Agricultural Zone the proprietors received a certain compensation for the loss of serf labour in the annual dues imposed on the peasantry by the Emancipation law. It must be added, however, that this compensation was not nearly so great as it seemed. The proprietor found it always difficult, and often utterly impossible, to collect the dues; and he had reason to fear that the peasants, in accordance with the permission granted to them by the law, would, at the expiry of the first nine years, entirely liberate themselves from these dues by emigrating to the towns, or to more fertile parts of the country. The only way he had of escaping from these difficulties and dangers lay in demanding the so-called obligatory redemption of the land; and in adopting this expedient he had to make considerable sacrifices. In the first place, as he demanded the redemption of the land without obtaining the consent of the peasants, he had to accept four-fifths of the sum as full payment; and in the second place, a large part of the four-fifths was paid to him, not in money, but in Government bonds bearing interest at 5 per cent., which rapidly fell, on account of the enormous number of them which were simultaneously thrown on the market, to 80 per cent. of their nominal value. Thus, instead of receiving 150 roubles from each of his male peasants, he received only 130 roubles nominally, and considerably less in reality, unless he could wait for fifteen years, the term fixed for the replacing of the Government bonds by bank notes. And even of this diminished sum many proprietors actually received only a small portion, for the treasury paid to itself all claims which it had on the estates, and handed over merely the balance.

25. (a). In the northern section of the Southern Agricultural, or Black Earth Zone, the soil was naturally rich, and still retained a great part of its virgin fertility, so that it could easily supply much more grain than was necessary for the wants of the inhabitants. The agricultural population was sufficient for the cultivation of the land, and the amount of land ceded to the serfs for their own use was a fair remuneration for the labour which they supplied to the owner of the estate. * * In short, the economic conditions in this region were such, that serfage was little, if at all, more profitable than free labour; and therefore we may conclude that for the loss of serf labour the proprietors did not require any compensation. As to the dues, they did not, perhaps, quite represent the full value of the land ceded to the Commune; but the difference between the real and the assumed value was not great. If the proprietors had any just ground of complaint, it was that the inevitable rise in the

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price of land, which many of them clearly foresaw, was not taken into account.

(δ). In the southern section of this zone the population was not nearly so dense, and the supply of labour was consequently not equal to the demand. Serfage had, therefore, a considerable value, and the land-owners were not at all indemnified for its abolition; for the peasants of this region received a large quantity of land, and certainly did not require to pay more for it than it was worth.

26. In this interesting account of the system of land tenure in Russia, and the abolition of serfdom, there are certain deficiencies that may be supplied from a paper by Herr Julius Faucher of Berlin, on the "Russian Agrarian Legislation of 1861," which is contained in the volume of essays published by the Cobden Club, on "Systems of Land Revenue in various countries."

I. In Bengal the zemindars were originally collectors of revenue, or chiefs of principalities, or administrators of districts to whom the Emperor had granted a portion of the fixed State dues from proprietors of land. For Russia M. Julius Faucher gives the following account:—

(a). The bondage of agricultural labour, taken off from the Russian people by the legislation of 1861, was of comparatively recent origin. It is true that already at the dawn of recorded Russian history, we meet with the existence of slaves of the Czar as well as of the nobles of his court, but these slaves were prisoners of war, and their offspring the personal property of their masters, and quite different from the peasantry, which formed the bulk of the Russian people. The noblemen who owned those slaves were themselves *no* landed proprietors in their own right, nor even vassals owing allegiance for the tenure of land, but servants of the crown, whom the crown had to feed. This, not as a rule, but often, was managed in the form of an allotment to them of crown land, to be tilled by their slaves, either for a number of years or for life; or, but rarely with revocable permission, to leave the fruit of it to their descendants. Such nobles as did *not* own slaves were sometimes paid by the Czar's abandoning to them the yield of the taxes due to the Czar by the peasantry of one or more villages. But such an arrangement did not legally impair in the slightest degree the liberty of these peasants. They remained the free children of the Czar, entitled legally to break off their household, and to separate from their village community whenever they liked, and to join another. The yield of the taxes of the place, not that of so many distinct persons, was given in lieu of salary. The Russian peasants of those times were nobody's servants but the Czar's, like everybody else in the empire. Nor for tracing the origin of the bondage now destroyed, is it necessary to refer to the more remote parts of Russian history.* * *

(δ). On the expulsion of the Mongols into Asia, the bond of unity of the empire had to be drawn tighter. The rule of numerous princes, vassals of the grand prince, who now officially adopted the name of

Czar, or rather Zar, had to be done away with at all events. Ivan III commenced the struggle. Ivan IV, the Terrible, brought it to a successful issue. This struggle favoured the growth of a petty nobility, formed partly of the courtiers of the late princes, whom the Czars left in possession of the yield of the taxes of such villages as had been allotted to them by their former masters, without insisting upon regular service on their part, merely reserving the right to summon them when wanted. Such is still the relation of the whole Russian nobility to their Czar. It consisted, further, of the Czar's own servants, who were partly taken¹ from among the villagers themselves, likewise endowed with the yield of the taxes of one or more¹ villages, and lastly, the proprietors of such villages, mainly situated in the western parts of Russia, which had been formed of slaves, and had always been the property of their masters.

II. It is seen from Mr. Wallace's account that the village communes are partly established on what were, till lately, the lands of nobles, and partly on lands held directly from the State. The following explanation of this circumstance brings out strikingly the provision in the Russian land system, for supporting, without a Poor Law, an increase of population, and the facility, in the immense wastes in the Russian Empire, of providing for that increase through the expansive colonising power of the village communities:—

(a). The division of the Russian people into Great Russians and Little Russians signifies far more than a mere split of the language into two dialects, which, by the way, differ but little from each other. Let us state at once the salient point. Little Russia, with Kiew for its centre, is the mother-country; and Great Russia, with Moscou for its centre, is the *colony*, the one great colony whose limits are not fixed. Little Russia is Slavonic, pure; the Great Russians are a mixed race, a majority being Slavonians, undoubtedly, and who, more by dint of higher culture than by the sword, were the conquerors, with a minority of the former inhabitants of the country, the Finnic tribes or Tchudes. And now the consequence of it on which we intend to lay stress! The colony, which afterwards became the dominant part of the empire (*colonisation never being completed*, that is to say, never yet having occupied the whole disposable soil), did not yet find time to undergo such changes in the form of the tenure and the tillage of land as have occurred in the other places, where originally the same form prevailed in that which the Great Russians continued to preserve while constantly applying it anew, as colonists, on virgin soil.

(b). It may be stated at once that this form was that of the joint husbandry of a whole village. The village, not the family, was the social unit. Supplanting the family for purposes of colonisation, the village, by necessity, partook to a certain extent of the character of a family. Movable property alone was individual; immovable—the land at least—was common. With the alien not belonging to the village, the

¹ Mocuddums, or heads of villages, and dependent talukdars.

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village only, not the individual, had to do. The village always had a mother-village, and the mother-village again had a mother-village, and so on. The name of mother-village in general, or of mother-village to another district village, is still attached to many Russian towns and villages; but even where the tradition of it is now lost, it may be taken for granted that such a relation once existed. * * I have been witness (in the government of Moscou in the summer of 1867) to the fact that a whole village, which had been destroyed by one of the numerous conflagrations of that year, and which had lost everything, whose inhabitants, besides, not feeling at ease where they were, resolved to return to the mother-village of their village, situated 250 miles off, and which they, or rather their ancestors, had left nearly fifty years ago;—they collected money for this purpose from the neighbouring country, and even the neighbouring villages, which, fully appreciating the resolution, contributed their share.

(c). The colonisation by whole villages giving birth to other villages, and sending them off and planting them often at a very great distance, was necessitated by the difficulties colonisation had to encounter in those tracts and in those times. * *

(d). As said before, the possibility of constantly throwing off the surplus of the increasing population of the village by founding a daughter-village on virgin soil, was calculated to take away every stimulus to change the system, which at the same time was so extremely fitted to the exigencies of that primitive colonisation. While all the other Slavonian nations, the Little Russians not excepted, followed to a certain extent the ways of Central and Western Europe (a process which partly was quickened by conquest, those farther west being almost invariably the conquerors of those farther east), the Great Russians alone kept the original form of settled life of the Slavonian race intact. Their place on the utmost north-eastern wing of the race, putting them at the same time out of reach of western conquest, with nothing but huntsmen, and nomads, and virgin soil all round them, made *expansion, not change*, their law of progress, just as it seems to have been the case with the Chinese whom they are now facing.

III. The abolition of serfdom was analogous to any measure by which the Government of India might undo the mischiefs that have arisen from the zemindary settlement by fixing permanently the demand on the cultivators of land, as was intended from the outset by the framers of the permanent settlement. The considerations which determined the eventual settlement with the emancipated serfs, and the broad features of that settlement, are shown in the following extracts:—

(a). This much was considered as a settled thing, when the Emperor Alexander II ascended the throne, by himself as well as by his people, that at all events *serfdom* was now to be entirely and forcibly eradicated from agrarian legislation in Russia. In this primary and unconditional postulate all the world agreed. But nobody, not even

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the most strenuous advocate of unlimited rights of property in land, conferred by superannuation on the proprietor in legally acknowledged possession, could hide from himself that merely to sever the link between master and serf, and to make this measure at the same time sever the link between the serf and the *land*, would be, besides an historical injustice, a political blunder involving the most direful consequences. For what was to become of an enfranchised serf? An agricultural labourer? Would this be the use he would make of his freedom that he remained what he had been, with this difference that his master, now called his employer, could in his idea, far worse than to whip him, turn him out of doors with wife and child, at the slightest symptom of even a justifiable disobedience? A farmer? And if a farmer, a farmer of what? merely of the land necessary to provide the food and clothing for the family? But, being unable to pay any rent out of the produce of this land, he would have to do other work to enable him to pay the rent. What work? Village industry? Field labour on the proprietor's land? Would not he thus legally be the same labourer as above, only with notice to quit by the year, instead of by the week, for practically it would be by the year in both cases; and in both cases the security of his sustenance, which with serfdom was perfect, would be superseded by a constant apprehension of losing his sustenance, and render him as resistless as farmer against rack-rent, as he would be resistless as labourer against depression of wages and maltreatment. Practically, in both cases, his position would be exactly the same; for the rack-rent in the one case would be but another form of the depression of wages in the other. Everybody, economist as well as socialist, understood that the economical, or social law, as the reader likes, which regulates the relations between employer and labourer, and between proprietor and farmer, a law which the economist trusts and the socialist curses, at all events was not applicable, where the threat of the loss of a homestead, and of a sustenance hitherto enjoyed by the future labourer or farmer under very different arrangements, was thrown into the balance, to the employer's or proprietor's advantage, and to the labourer's or farmer's disadvantage. It could not but have rapidly brought about a probably fearful state of the country. It would have soon filled the country with swarms of peasantry, wandering to and fro, now begging, now endangering the safety of the roads, and finally of the country-seats. The pretext of Boris Godunou would have been turned into a reality.

(b). The resolve of doing away altogether with serfdom involved, therefore, in everybody's eyes in Russia, at once a *second* resolve, namely, that of settling the *land question* between the late *master* and his late *serfs* in such a way as to prevent the bulk of the peasantry from becoming suddenly and simultaneously unsettled and homeless, and thus to make the new relations between employer and labourer, or between proprietor and farmer, take their issue from a position duly balanced between them.

(c). But this being agreed upon by almost unanimous consent, a *third* still more precarious problem at once emerged, so to speak, from the deep sea of agrarian history in Russia, and forced itself on the anxious attention of the native statesmen and writers on public affairs. If the land was to be divided between the master and his *serfs*, was the

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single former serf to be invested with freehold property in accordance with what had taken place under similar circumstances farther west in Europe, or was regard to be had to the old national custom of common village property and joint village husbandry? The "Mir," as the language has it, is an expression not to be translated into a language of Western Europe. * *

(d). The whole plan, under the contending influence of opposed ideas as to the future agrarian organization to be desired, assumed this general shape—the retention of the system of common husbandry by the enfranchised serfs of a village, as the cradle of an estate of peasant proprietors, created by their own free efforts, by the side of large noble proprietors of land, so that both classes of proprietors will have to show of what stuff they are made. Events will prove whether the peasant proprietary will increase, owing to further purchases of land, or property will be absorbed in the hands of the nobles, who will then have to turn it into account by free labour, instead of by the labour of serfs, or by letting their land probably in farms of larger size to the most intelligent and enterprising of the class. The "Mir" or copyhold, which evidently will retain the weakest part of the peasantry, would serve all the while as a safeguard against the spread of pauperism of the West European character, as a kind of agricultural work-house under the management of the inmates themselves, but not, as will be seen, without control—a work-house endowed with a not inconsiderable amount of soil for which rent is to be paid.

IV. The settlements with the Russian nobles, in discharge of all further claims of theirs on the liberated serfs, were made on principles which deprived them of the yet "unearned increment," and which commuted their rents for less than the actual amount. Thus—

(a). The proprietor of a village was bound to hand over to the villagers, in hereditary copyhold, against payment of rent, an amount of land, the exact size of which was to depend on local circumstances, and on friendly agreement between the proprietor and the peasants; but so that the land transferred to the village should amount to not less than $4\frac{1}{2}$ djessatines (about twelve acres) per male head of the population. * * The real extent of the land transferred will have been, in most cases, that of the "Nadel," that is to say, of the land which the peasants had under cultivation for sustaining themselves and their families while serfs.

(b). The transferred land was to include not less proportions of manured, pasture and garden land than might be agreed to by the peasants. In short, precautions were taken to prevent the proprietor from mutilating the self-sustaining completeness of peasant husbandry from the beginning. Those who framed the details wanted a stable "Mir," or, if the peasants should prefer to dissolve it, a stable peasantry founded on individual property.

(c). For the space of *nine* years after the new regulations had become the law of the land, it was rendered *obligatory* on the peasantry to

keep the land in copyhold against payment of rent. Only this much was allowed, that by free agreement between the proprietor and the peasant, on the proposition of the latter a reduction of the peasant's share to one-half of the maximum, where this at first had been exceeded, could be effected. But this was then to be the definitive size of the peasant's share. It was further allowed, that if within the nine years the peasants in common should purchase not less than one-third of the *maximum* of copyhold land, or if the proprietors should make a present to the peasants of so much land as formed one-fourth of the maximum, the peasants might renounce the remainder in copyhold, even before the lapse of the obligatory nine years.

(d). The copyhold fee or rent was fixed by taking labour as the form of rent, and the maximum of the peasants' land, on the male head of the village population, as the basis of the calculation [here follows a sketch of details of calculation.] It will be seen that care has been taken to keep as close as possible in framing the law to the custom which prevailed in the times of serfdom, of the proprietor leaving three days of the week to his serfs, and claiming the other three for himself. He has still his three days per week, only he has far less labourers to dispose of. For, instead of having to claim about one hundred and thirty days, he has to claim but forty, and, respectively, thirty. This, especially, is what has reduced the value of Russian estates after the abolition of serfdom.

(e). For the rent in money, too, where this form is adopted, does not make up for the working days of the serfs lost by the proprietor, being merely the equivalent of the number of working days now forming the rent of a share. The transition from labour rent to money-rent was made optional with the peasants, with the whole community, or with every single family, in the sense of the repartition for tilling purposes of the land by the members of the community among themselves, *tjaglo*, only two years after the law had become valid, and they not being in arrear with working days. Four-fifths of the peasants having effected the transition from labour-rent to money-rent, it was made optional with the proprietor of the estate to compel the remaining fifth. * * The legislator has estimated the rent of an acre in Russia at 2*s.* 4*d.*, and the wages of agricultural labour at 5*d.* a day. Both estimates are far from coinciding with the prices actually obtainable in the open market. Wages almost everywhere are much higher, so that it is advantageous to the peasantry to pay the money-rent or "obrok," instead of working for the proprietor.

27. Mr. Mitchell in his report of 1870 to the Foreign Office, on the system of land tenure in Russia, gave the following sketch of the general features of the measure of emancipation :—

I. The leading principles on which the Emancipation Act is now based are as follows :—

(a). The cession of the perpetual usufruct (tenancy) of the serf's homestead, and of certain allotments of land, on terms settled by mutual agreement, or, failing which, on conditions fixed by law.

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(*b*). The compulsory sale by the lord, at the desire of the serf, of the serf's homestead, either on terms of mutual agreement or on conditions fixed by law, the right of refusing to sell the homestead without the statute land allotment being reserved to the lord.

(*c*). State assistance in the redemption (purchase) by the serf of his homestead and territorial allotment, provided the lord shall agree to sell the latter.

II. As regards, therefore, the interest of the serf, the advantages conferred upon him by the Emancipation Act may be summarized as follows:—

(*a*). The right of a freeman.

(*b*). The right of enjoying, on terms fixed by law, the perpetual usufruct of his homestead, and of certain maximum and minimum territorial allotments, based on the quantity of land which he cultivated prior to the emancipation.

(*c*). The right of converting his liability in service (socage) into a money rent on terms fixed by law.

(*d*). The right of demanding the sale of his homestead from the lord, and the right (subject to the consent of the lord) of purchasing his territorial allotment also.

(*e*). The means afforded by the State of fully and finally terminating, by the redemption of homesteads and territorial allotments, his relations of dependence towards the lord of the soil; and,

(*f*). Communal and cantonal self-government.

III. The interest of the landed proprietor is protected by the following provisions of the Emancipation Act:—

(*a*). Whether the lord grant the perpetual usufruct (tenancy) or the freehold of the peasant homesteads and land allotments, a money payment, more or less equivalent, based on the rents which he previously enjoyed, is secured to him, and he is therefore called upon to cede without compensation only his political rights over the serf, and his right to the gratuitous labour of the domestic serf.

(*b*). He can insist on the serf purchasing his territorial allotment as well as his homestead.

(*c*). He can refuse to sell the territorial allotment without the homestead.

(*d*). He can avoid the cession of the perpetual usufruct of the territorial allotments fixed by law, by bestowing, as a free gift on the peasantry who shall consent to receive the same, a quarter of the maximum allotment of which they are entitled to enjoy the usufruct, with the homestead on it.

(*e*). He is no longer responsible for the care of the poor or for the payment of the Imperial taxes by the peasantry.

(*f*). He is no longer bound to defend actions at law to which the peasantry on his soil may be engaged, nor to pay the fines, &c., for which, when inflicted on the serf, he was previously liable.

(*g*). He obtains compensation for the loss of serf labour and for the cession of lands in Government stock, in the proportion of 80 per cent. of the valuation of the latter.

(*h*). He obtains the means of clearing off any mortgage with which his land may be burdened, and an amount of ready money that

will, under favourable circumstances, enable him to conduct his farming operations by means of hired labour and machinery.

IV. The interest of the State consisted in promoting the welfare of the great bulk of its population by stimulating the development of agriculture. But apart, to some extent, from this interest, the Russian Government was forced by financial exigencies to protect the interest of the Exchequer, by the preservation of the system of poll taxation. This fiscal interest was identical with that of the State institution charged with the "Redemption operation," *viz.*, with the advance of money to the peasantry for the purpose of buying their homesteads and territorial allotments.

V. The two latter interests were protected by the introduction of a system of collective responsibility under which the peasantry were made to guarantee mutually the exact payment of their quit-rents, taxes, and "redemption dues." That collective responsibility was laid on the village communes which as corporate bodies became the purchasers of the land ceded to the peasantry, who thus became in a measure only tenants under communes.

VI. In order, on the other hand, to prevent dissolution of the commune,—the administrative and financial unit,—the Emancipation Act was calculated, by a variety of subtle provisions, to prevent the peasantry from leaving the soil to which they were, therefore, attached almost as firmly as in 1592.

28. Among the results to be expected from the abolition of serfdom, Mr. Mitchell notices the following:—

I. Another important result may be expected from the disintegration of the old serf units, namely, that it will have the effect of checking the migratory, nomadic tendency of the Russian people. As a member of a communal family, the serf could leave his wife and children at home while he ranged over the country to tempt the smiles of fortune, and frequently only to escape from the burdens and melancholy slavery of the family life. He knew that, whatever happened to him, his wife and children would get their share out of the common bowl of buckwheat or cabbage soup. The chains of his serfdom were heavier at home than abroad, and he was anxious to lighten them whenever the chance occurred. Now, however, since the peasant cannot leave his wife and children with equal facility and security, as regards their material provision, he becomes attached to his homestead by natural ties that will render unnecessary the application of those unnatural laws by which a nominally free peasantry continue to be firmly attached to the soil.

II. Before a tenant can leave his commune and relinquish the allotment which he holds, he must obtain the consent of the communal administration, which will demand—

- (1). The cession of his right to a portion of the communal allotment.
- (2). The cession, to the proprietor, of the allotment which he cultivated, if the commune refuses to accept it.
- (3). The performance of his liabilities, if he have any, in respect of the annual recruitment.
- (4). That he shall make good any arrears of Imperial, local, and rural taxes due by his family, and pay his taxes up to the 1st of January of the following year.

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(5). That he shall satisfy all private claims and perform all contracts that are beyond dispute, and that shall have been exhibited to the cantonal administration.

(6). That he shall not be at the time under judgment or pursuit.

(7). That he shall make provision for members of his family who, while remaining in the commune, may be unable, from youth or old age, to do any work.

(8). That he shall make good any arrears of rent due to the lord on the allotment which he held; and

(9). That he shall present the resolution of another commune, admitting him as a member of it, or a certificate to prove that he has purchased the freehold of a plot of land of an area of at least two maximum or statute allotments, situated at a distance of not more than fifteen versts (ten miles) from the commune to which he desires to attach himself.

III. It is true that he may, without leaving the commune, relinquish the allotment which he held in it, but it is only on conditions of his purchasing the freehold of an estate of an area of at least two maximum or statute allotments within ten miles of his commune.

But he cannot give up his land allotment without relinquishing his homestead, unless he shall have purchased the latter with the consent of the lord, a consent which it is not the interest of the lord to give.

IV. There are two very difficult conditions on which a tenant can leave his commune, even after the expiration of the term of his compulsory tenancy, without obtaining the consent either of the lord of the commune, namely, by paying into the communal fund a sum that will represent 16½ years' purchase of his annual quit-rent, capitalized at 6 per cent., or by the lord relinquishing his right to the perpetual quit-rent due by the tenant; or, again, by permitting the commune, and the latter consenting, to assume the responsibilities of the outgoing member.

V. The necessity of gaining admission into some other commune, or into some taxable class, is of itself sufficient to render impossible the migration of the remaining tenants to any great extent. The quantity of land held by a commune being limited once for all, its interest will not lie in the direction of admitting new members. If the commune is prosperous, and owes no arrears, why should it bestow a portion of its prosperity on a new comer? And if it be in a condition of poverty and indebtedness, the seceder from another poor village community will naturally not seek admission into it. And then, as regards the burgher class into which, under the Emancipation Act, the seceding peasant, after fulfilling all the other heavy conditions imposed upon him, is allowed to seek admission, it is doubtful whether the Government will allow this provision of the Act to remain unexplained by a circular, since the burgher class is no longer liable to a capitation tax.

29. We find from this Appendix that Russia has incurred considerable expense for putting an end to a serfdom that had been brought about by mistakes of past Governments which bear a curiously close resemblance to the mistakes committed by Lord Cornwallis in his zemindary settlement of Bengal.

APPENDIX XXVIII.

HISTORY OF ENGLISH LAND TENURES.

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HALLAM'S
MIDDLE AGES—
(Student's
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1. I. (a). The proper division of freemen was into EORLS and CEORLS, a division corresponding to the phrase 'gentle and simple' of later times. The eorl was a gentleman, the ceorl a yeoman, but both freemen. The eorl did not become a title of office till the eleventh century, when it was used as synonymous to alderman for the governor of a county or province. After the word became used in this restricted sense, the class of persons which it originally designated was called THANES, and accordingly we have the two-fold division of freemen into THANES and CEORLS.

(b). Among all the northern nations, as is well known, the weregild, or compensation for murder, was the standard measure of the gradations of society. In the Anglo-Saxon laws we find two ranks of free-holders, the first called King's Thanes, whose lives were valued at 1,200 shillings; the second, of inferior degree, whose composition was half that sum. That of a ceorl was 200 shillings. If this proportion to the value of a thane points out the subordination of rank, it certainly does not exhibit the lower freemen in a state of complete abasement. The ceorl was not bound, at least universally, to the land which he cultivated. He was occasionally called upon to bear arms for the public safety; he was protected against personal injuries or trespasses on his land. He was capable of property, and of the privileges which it conferred. If he came to possess five hydes of land (or about 600 acres), with a church and mansion of his own, he was entitled to the name and rights of a thane. And if by owning five hydes of land he became a thane, it is plain that he might possess a less quantity without reaching that rank. There were, therefore, ceorls with lands of their own, and ceorls without lands of their own; ceorls who might commend themselves to what lord they pleased, and ceorls who could not quit the land on which they lived, owing various services to the lord of the manor, but always freemen, and capable of becoming gentlemen.

(c). Nobody can doubt that the *villani* and *bordarii* of Domesday Book, who are always distinguished from the serfs of the demesne, were the ceorls of Anglo-Saxon law. And I presume that the *soemen*, who so frequently occur in that record, though far more in some counties than in others, were ceorls more fortunate than the rest, who by purchase had acquired freeholds, or by prescription and the indulgence of their lords had obtained such a property in the outlands allotted to them, that they could not be removed, and in many instances might dispose of them at

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(d). Beneath the ceorls in political estimation were the conquered natives of Britain. In a war so long and so obstinately maintained as that of the Britons against the invaders, it is natural to conclude that in a great part of the country the original inhabitants were almost extirpated, and that the remainder were reduced into servitude. This, till lately, has been the concurrent opinion of our antiquaries; and with some qualification I do not see why it should not still be received. * * If we look through the subsisting Anglo-Saxon records, there is not very frequent mention of British subjects. But some undoubtedly there were in a state of freedom and possessed of landed estate. A Welshman (that is, a Briton) who held five hydes was raised, like a ceorl, to the dignity of thane. In the composition, however, for their lives, and consequently in their rank in society, they were inferior to the meanest Saxon freemen. The slaves, who were frequently the objects of legislation, rather for the purpose of ascertaining their punishments than of securing their rights, may be presumed, at least in early times, to have been part of the conquered Britons. For though his own crimes, or the tyranny of others, might possibly reduce a Saxon ceorl to this condition, it is inconceivable that the lowest of those who won England with their swords should in the establishment of the new kingdoms have been left destitute of personal liberty.

II.—FRANK-PLEDGE.

(a). The law of frank-pledge proceeded upon the maxim that the best guarantee of every man's obedience to the government was to be sought in the confidence of his neighbours. * * The peculiar system of frank-pledge seems to have passed through the following very gradual stages: At first an accused person was obliged to find bail for standing his trial. At a subsequent period, his relations were called upon to become sureties for payment of the composition and other fines to which he was liable. They were even subject to be imprisoned until payment was made, and this imprisonment was commutable for a certain sum of money. The next stage was to make persons already convicted, or of suspicious repute, give sureties for their future behaviour. It is not till the reign of Edgar that we find the first general law which places every man in the condition of the guilty or suspected, and compels him to find a surety who shall be responsible for his appearance when judicially summoned. This is perpetually repeated and enforced in later statutes, during his reign and that of Ethelred. Finally, the laws of Canute declare the necessity of belonging to some hundred and tything, as well as of providing sureties; and it may perhaps be inferred that the custom of rendering every member of a tything answerable for the appearance of all the rest, as it existed after the conquest, is as old as the reign of this Danish monarch.

(b). It is an error to suppose, as some have stated, that "the members of every tything were responsible for the conduct of one another; and that the society or their leader might be prosecuted and compelled to make reparation for an injury committed by any individual." In fact, the

members of a tything were no more than perpetual bail for each other. "The greatest security of the public order (say the laws ascribed to the Confessor) is that every man must bind himself to one of those societies which the English in general call freeborgs, and the people of Yorkshire "ten men's tale." This consisted in the responsibility of ten men, each for the other, throughout every village in the kingdom; so that, if one of the ten committed any fault, the nine should produce him in justice, where he should make reparation by his own property, or by personal punishment. If he fled from justice, a mode was provided, according to which the tything might clear themselves from participation in his crime or escape; in default of such exculpation, and the malefactor's estate proving deficient, they were compelled to make good the penalty. And it is equally manifest, from every other passage in which mention is made of this ancient institution, that the obligation of the tything was merely that of permanent bail, responsible only indirectly for the good behaviour of their members. Every freeman above the age of twelve years was required to be enrolled in some tything.

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If it were possible for the Government to help Bengal ryots to buy out the rights of zemindars, the help might be given on the condition of each village assuming a joint and several responsibility analogous to that of frank-pledge.

2. I.—FEUDAL TENURES BEFORE THE CONQUEST.

(a). The distribution of landed property in England by the Anglo-Saxons is clearly explained by Mr. Allen, in his inquiry into the 'Rise and growth of the Royal Prerogative': "Part of the lands they acquired was converted into estates of inheritance for individuals; part remained the property of the public and was left to the disposal of the State. The former was called *Bocland*; the latter, *Folcland*."

"*Folcland*, as the word imports, was the land of the *folk* or people. It was the property of the community; it might be occupied in common or possessed in severalty. But, while it continued to be folcland, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority."

HALLAM'S
MIDDLE AGES.

"*Bocland* was held by *book*, or charter. It was land, that had been severed by an act of government from the folcland, and converted into an estate of perpetual inheritance. It might belong to the church, to the king, or to a subject. It might be alienable and devisable at the will of the proprietor. It might be limited in its descent without any power of alienation in the possessor. It was often granted for a single life, or for more lives than one, with remainder in perpetuity to the church. It was forfeited for various delinquencies to the State."

"*Folcland* was subject to many burthens and exactions from which bocland was exempt. The possessors of *folcland* were bound to assist in the reparation of royal villas and in other public works. They were liable to have travellers and others quartered on them for subsistence; to give hospitality to kings and great men in their progresses through the country; to furnish them with carriages and relays of horses; and

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to extend the same assistance to their messengers, followers, and servants, and even to the persons who had charge of their hawks, horses, and hounds. Such at least are the burthens from which lands are liberated when converted by charter into bocland. Bocland was liable to none of these exactions. It was released from all services to the public, with the exception of contributing to military expeditions, and to the reparation of castles and bridges. These duties or services were comprised in the phrase of *trinoda necessitas*, which were said to be incumbent on all persons, so that none could be excused from them."

(b). The obligations of the *trinoda necessitas*, and especially that of military service, have been sometimes thought to denote a feudal tenure. There is, however, a confusion into which we may fall by not sufficiently discriminating the rights of a king as chief lord of his vassals, and as sovereign of his subjects. In every country, however, the supreme power is entitled to use the arm of each citizen in the public defence. The usage of all nations agrees with common reason in establishing this great principle. There is nothing, therefore, peculiarly feudal in this military service of landholders; it was due from the alodial proprietors upon the Continent; it was derived from their German ancestors; it had been fixed, probably, by the legislatures of the Heptarchy upon the first settlement in Britain. * * *

(c). Whether, therefore, the law of feudal tenures can be said to have existed in England before the conquest, must be left to every reader's determination. Perhaps any attempt to decide it positively would end in a verbal dispute. The name will probably not be found in any genuine Anglo-Saxon record. Of the form, or the peculiar ceremonies and incidents of a regular fief, there is some, though not much, appearance. But those who reflect upon the dependence in which free and even noble tenants held their estates of other subjects, and upon the privileges of territorial jurisdiction, will, I think, perceive much of the intrinsic character of the feudal relation, though in a less mature and systematic shape than it assumed after the Norman conquest. * *

(d). It will probably be never disputed again that lands were granted by a military tenure before the conquest. But the general tenure of lands was still allodial. We may probably not err very much in supposing that the state of tenures in England under Canute or the Confessor was a good deal like those in France under Charlemagne or Charles the Bald—an allodial trunk with numerous branches of feudal benefice grafted into it. But the conversion of the one mode of tenure into the other, so frequent in France, does not appear by evidence to have prevailed on this side of the channel. On this question Professor Stubbs remarks (*Select Charters*, &c., p. 113): "From the end of the tenth century a change sets in which might ultimately, by a slow and steady series of causes and consequences, have produced something like Continental feudalism. The great position taken by Edgar and Canute, to whom the princes of the other kingdoms of the island submitted as vassals, had the effect of centralising the Government and increasing the power of the king. Early in the eleventh century he seems to have entered on the right of disposing of the public land without reference to the witan, and of calling up to his own court, by writ, suits which had not yet exhausted the powers of the lower tribunals. The number

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of royal vassals was thus greatly increased, and with them the powers of royal and noble jurisdictions. Canute proceeded so far in the direction of imperial feudalism as to re-arrange the kingdom under a very small number of great earls, who were strong enough in some cases to transmit their authority to their children, though not without new investiture, and who, had time been given for the system to work, would have developed the same sort of feudality as prevailed abroad. Already by sub-infeudation, or by commendation, great portions of the land of the country were being held by a feudal tenure, and the allodial tenure, which had once been universal, was becoming the privilege of a few great nobles too strong to be unseated, or a local usage in a class of land-owners too humble to be dangerous."

3.—WILLIAM THE CONQUEROR.

I. The commencement of his administration was tolerably equitable. HALLAM'S MIDDLE AGES. Though many confiscations took place in order to gratify the Norman army, yet the mass of the property was left in the hands of its former possessors. * * Impressed by the frequent risings of the English at the commencement of his reign, and by the recollection, as one historian observes, that the mild government of Canute had only ended in the expulsion of the Danish line, he formed the scheme of riveting such fetters upon the conquered nation that all resistance should become impracticable. * * An extensive spoliation of property accompanied these revolutions.

II. (a). It appears by the great national survey of Domesday Book, completed near the close of the conqueror's reign, that the tenants *in capite* of the crown were generally foreigners. Undoubtedly there were a few left in almost every country, who still enjoyed the estates which they held under Edward the Confessor, free from any superiority but that of the crown, and were denominated, as in former times, the king's thanes. Cospatrie, son perhaps of one of that name who had possessed the earldom of Northumberland, held forty-one manors in Yorkshire, though many of them are stated in Domesday to be waste. But inferior freeholders were much less disturbed in their estates than the higher class. It is manifest, by running the eye over some pages of the list of mesne tenants at the time of the survey, how mistaken is the supposition that few of English birth held entire manors. They form a large proportion of nearly 8,000 *mesne* tenants. And we may presume that they were in a very much greater proportion among the "*liberi homines*," who held lands subject only to free services, seldom or never very burthensome. It may be added that many Normans, as we learn from history, married English heiresses, rendered so frequently, no doubt, by the violent deaths of their fathers and brothers, but still transmitting ancient rights, as well as native blood, to their posterity.

(b). This might induce us to suspect that, great as the spoliation might appear in modern times, and almost completely as the nation was excluded from civil power in the commonwealth, there is some exaggeration in the language of those writers who represent them as universally reduced to a state of penury and servitude. But whatever may have been the legal condition of the English mesne tenant by knight

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service or socage (for the case of villeins is of course not here considered) during the first two Norman reigns, it seems evident that he was protected by the charter of Henry I, in the hereditary possession of his lands, subject only to a "lawful and just relief towards his lord." For this charter is addressed to all the liege men of the crown, "French and English;" and purports to abolish all the evil customs by which the kingdom had been oppressed, extending to the tenants of the barons as well as those of the crown.

(c). The vast extent of the Norman estates *in capite* is apt to deceive us. In reading of a baron who held forty or fifty or one hundred manors, we are prone to fancy his wealth something like what a similar estate would produce at this day. But if we look at the next words, we shall continually find that some one else held of him; and this was a holding by knight's service, subject to feudal incidents no doubt, but not leaving the seignior very lucrative, or giving any right of possessing ownership over the land. The real possessions of the tenant of a manor, whether holding as chief or not, consisted in the demesne lands, the produce of which he obtained without cost by the labour of the villeins, and in whatever other payments they might be found to make in money or kind. It will be remembered, what has been more than once inculcated, that at this time the villani and bordarii, that is, ceorls, were not like the villeins of a later time, destitute of rights in their property; their condition was tending to the lower stage, and with a Norman lord they were in much danger of oppression; but they were "law worthy," they had a civil *status* (to pass from one technical style to another) for a century after the conquest. * *

(d). One innovation made by William upon the feudal law is very deserving of attention. By the leading principle of feuds an oath of fealty was due from the vassal to the lord of whom he immediately held his land, and to no other. The king of France, long after this period, had no feudal and scarcely any royal authority over the tenants of his own vassals. But William received at Salisbury in 1085 the fealty of all landholders in England, both those who held in chief and their tenants; thus breaking in upon the feudal compact in its most essential attribute, the exclusive dependence of a vassal upon his lord. And this may be reckoned among the several causes which prevented the continental notions of independence upon the crown from ever taking root among the English aristocracy. * *

4. Here we find that even William the Conqueror respected the titles of the peasant proprietors; the seigniorial rights over vast estates, which he conferred on his barons, did not give them right of possessing ownership over the land; such right on their part was confined to their demesne lands, which correspond to the neej lands of zemindars.

I. (a). The feudal institutions were far less military in England than upon the Continent. From the time of Henry II, the escuage, or pecuniary commutation for personal service, became almost universal. * * Thus the tenure of knight service was not in effect much more peculiarly connected with the profession of arms than that of socage.

II. (b). A respectable class of free socagers, having, in general, full rights of alienating their lands, and holding them probably at a small certain rent from the lord of the manor, frequently occur in Domesday Book. Though these were derived from the superior and more fortunate Anglo-Saxon *ceorls*, they were perfectly exempt from all marks of villeinage, both as to their persons and estates. Most have derived their name from the Saxon *soc*, which signifies a franchise, especially one of jurisdiction. * * They were all Englishmen, and their tenure strictly English, which seems to have given it credit in the eyes of our lawyers. * * Certainly Glauvii, and still more Bracton, treat the tenure in free socage with great respect. And we have reason to think that this class of freeholders was very numerous even before the reign of Edward I.

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5. Thus we find that the proprietary rights of the Yeomanry, which originated in the customs and institutions of the Anglo-Saxons, were respected in the Norman Conquest; they were afterwards destroyed by the usurpations of the aristocracy, not by any fiat representing the deliberate judgment of England's statesmen and law-givers, that peasant proprietors, who during their existence in England were the saviours of English society, the defenders of its liberties, should cease from the land for the public good.

6. The following extracts are from Mr. Green's Short History of the English People:—

I. For the fatherland of the English race we must look far away from England itself. In the fifth century after the birth of Christ, the one country which bore the name of England was what we now call Sleswick, a district in the heart of the peninsula, which parts the Baltic from the Northern Seas. * * The dwellers in this district were one out of three tribes, all belonging to the same low German branch of the Teutonic family, who at the moment when history discovers them were bound together in some loose fashion by the ties of a common blood and a common speech. * * The basis of the society of these English folk was the free landholder. In the English tongue he alone was known as "the man," or "the churl;" and two English phrases set his freedom vividly before us. He was "the free-necked man," whose long hair floated over a neck that had never bent to a lord. Hé was the "weaponed man," who alone bore spear and sword, for he alone possessed the right which in such a state of society formed the main check upon lawless outrage, the right of private war. * * *

J. R. Green's
Short History of
the English people.

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II.—YEARS 449 TO 607.

The West Saxons have left a record of the solemn election by which they chose Cerdic for their king. Such a choice at once drew the various villages and tribes of each community closer together than of old, while the usage, which gave all unoccupied or common ground to the new ruler, enabled him to surround himself with a chosen war-band of companions, servants, or "thegns," as they were called, who were rewarded for their service by gifts from it, and who at last became a nobility which superseded the "ceorls" of the original English constitution. And as war begat the king and the military

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noble, so it all but begat the slave. There had always been a slave class, a class of the unfree, among the English as among all German peoples; but the number of this class, if unaffected by the conquest of Britain, were swelled by the wars which soon sprang up among the English conquerors. * * But war was not the only cause of the increase of this slave class. The number of the "unfree" were swelled by debt and crime. Famine drove men to "bend their heads in the evil days for wheat." The debtor, unable to discharge his debt, flung on the ground the freeman's sword and spear, took up the labourer's mattock, and placed his head as a slave within a master's hands. The criminal, whose kinsfolk would not make up his fine, became the crime-serf of the plaintiff or the king. * * The slave became part of the live-stock of the estate, to be willed away at death with the horse or the ass, whose pedigree was kept as carefully as his own. His children were bondsmen like himself; even the freeman's children by a slave-mother inherited the mother's taint. The cabins of the unfree clustered round the home of the freeman, as they had clustered round the villa of the Roman gentleman; ploughman, shepherd, goatherd, swineherd, oxherd, and cowherd, dairymaid, barnman, sewer, hayward, and woodward, were alike serfs. It was not such a slavery as that we have known in modern times, for stripes and bonds were rare; if the slave were slain, it was by an angry blow, not by the lash. But his lord could slay him if he would; it was but a chattel the less.

III.—YEARS 892-1016.

(a). After times looked back fondly to "Edgar's Law" as it was called, in other words, to the English constitution, as it shaped itself in the hands of Edgar's minister. Peace and change had greatly modified the older order which had followed on the English conquest. Slavery was gradually disappearing before the efforts of the church. Theodore had denied Christian burial to the kidnapper, and prohibited the sale of children by their parents after the age of seven. Ecgberht of York punished any sale of child or kinsfolk with excommunication. The murder of a slave by lord or mistress, though no crime in the eye of the State, became a sin for which penance was due to the church. The slave was exempted from toil on Sundays and holidays; here and there he became attached to the soil, and could only be sold with it; sometimes he acquired a plot of ground, and was suffered to purchase his own release. Æthelstan gave the slave class a new rank in the realm by extending to it the same principles of mutual responsibility for crime which were the basis of order among the free. The church was far from contenting herself with this gradual elevation. Wilfrith led the way in the work of emancipation by freeing two hundred and fifty serfs whom he found attached to his estate at Selsey. Manumission became frequent in wills, as the clergy taught that such a gift was a boon to the soul of the dead. At the Synod of Chaisea the bishops bound themselves to free at their decease all serfs on their estates who had been reduced to serfdom by want or crime. * *

(b). But the decrease of slavery was more than compensated by the increasing degradation of the bulk of the people. Much, indeed, of the

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dignity of the free farmer had depended on the contrast of his position with that of the slave; free among his equals, he was lord among his serfs. But the change from freedom to villeinage, from the freeholder who knew no superior but God and the law, to the tenant bound to do service to his lord, which was annihilating the old English liberty in the days of Dunstan, was owing mainly to a change in the character of English kingship. The union of the English realms had removed the king, as his dominions extended, farther and farther from his people. * * The older nobility of blood died out before the new nobility of the court. * * The thegn advanced with the advance of the king; he absorbed every post of honour, and became ealdorman, reeve, bishop, judge; while the common ground of the mass now became folk-land in the hands of the king, and was carved out into estates for his dependents.

(c). With the advance of the thegn fell the freedom of the peasant. The principle of personal allegiance embodied in the new nobility widened into a theory of general dependence. By Ælfred's day it was assumed that no man could exist without a lord. The ravages and the long insecurity of the Danish wars aided to drive the free farmer to seek protection from the thegn. His freehold was surrendered to be received back as a fief, laden with service to its lord; gradually the "lordless man" became a sort of outlaw in the realm. The free churl sank into the villein, and with his personal freedom went his share in the government of the state.

IV.—YEARS 1068-1071—(NORMAN CONQUEST).

(a). As the conqueror of England, William introduced the military organization of feudalism, so far as was necessary for the secure possession of his conquests. The ground was already prepared for such an organization; we have seen the beginnings of English feudalism in the warriors, the "companions" or "thegns," who were personally attached to the king's war-band, and received estates from the royal domain in reward for their personal service. Under the English kings this feudal distribution of estates had greatly increased, the bulk of the nobles having followed the royal example and united their tenants to themselves by a similar process of sub-infeudation. Feudal tenures.

(b). On the other hand, the pure freeholders, the class which formed the basis of the original English society, had been gradually reduced in number, partly through imitation of the class above them, but still more through the incessant wars and invasions which drove them to seek protectors among the thegns, even at the cost of independence. Feudalism, in fact, was superseding the older freedom in England even before the reign of William, as it had already superseded it in Germany or France. But the tendency was quickened and intensified by the Conqueror. The desperate and universal resistance of his English subjects forced William to hold by the sword what the sword had won, and an army strong enough to crush at any moment a natural revolt was necessary for the preservation of his throne. Such an army could only be maintained by a vast confiscation of the soil. The failure of the English risings cleared the way for its establishment; the greater part of the higher nobility had fallen in battle or fled into exile, while the lower thegns had either forfeited the whole of their lands or received a portion of

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them by surrender of the rest. We see the completeness of the confiscation in the vast estates which William was enabled to grant to his more powerful followers. Two hundred manors in Kent, with an equal number elsewhere, rewarded the services of his brother Odo, and grants almost as large fell to the royal ministers, FitzOsborn and Montgomery, or to barons like the Mowbrays, the Warrennes, and the Clares. But the poorest soldier of fortune found his part in the spoil. The meanest Norman rose to wealth and power in the new dominion of his Duke. Great or small, however, each estate thus held from the Crown was held by its tenants on condition of military service at the royal call; and when the larger holdings were divided by their owners, as was commonly the case, into smaller sub-tenancies, the under-tenants were bound by the same conditions of service to their lord. "Hear, my lord," swore the feudal dependant, as kneeling without arms and bare-headed he placed his hands within those of his superior, "I become liegeman of yours for life and limb and earthly regard, and I will keep faith and loyalty to you for life and death, God help me." The kiss of his lord invested him with land or "fief" to descend to him and his heirs for ever. A whole army was by this means camped upon the soil, and the king's summons could at any moment gather sixty thousand knights to the royal standard.
* * *

(c). The estates of the great nobles, large as they were, were scattered over the country in a way which made union between the land-owners, or the hereditary attachment of great masses of vassals to a separate lord, equally impossible. By a usage peculiar to England, each sub-tenant, in addition to his oath of fealty to his lord, swore fealty directly to the crown. The feudal obligations, too, the rights and dues owing from each estate to the king, were enforced with remarkable strictness. Each tenant was bound to appear, if needful, thrice a year, at the Royal Court, to pay a heavy fine or rent on succession to his estate, to contribute an "aid" in money in case of the king's capture in war, or the knighthood of the king's eldest son, or the marriage of his eldest daughter. * * Most manors, too, were burthened with their own "customs," or special dues to the crown, and it was for the purpose of ascertaining or recording these that William sent into each county the commissioners whose enquiries are preserved in Domesday Book. A jury empanelled in each hundred declared on oath the extent and nature of each estate, the names, numbers, and conditions of its inhabitants, its value before and after the conquest, and the sums due from it to the crown.

V.—YEARS 1154 TO 1189—(HENRY II).

The close of the great struggle with the Church left Henry free to complete his great work of legal reform. He had already availed himself of the expedition against Toulouse to deliver a crushing blow at the baronage by the commutation of their personal services in the field for a money payment, a "scutage," or "shield money," for each fief. The king thus became master of resources which enabled him to dispense with the military support of his tenants, and to maintain a force of mercenary soldiers in their place. The diminution of the military

power of the nobles had been accompanied by measures which robbed them of their legal jurisdiction. The circuits of the Judges were restored, and instructions were given them to enter the manors of the barons and make inquiry into their privileges; while the office of sheriff was withdrawn from the great nobles of the shire, and entrusted to the lawyers and courtiers who already furnished the staff of justices. The resentment of the barons found an opportunity of displaying itself. * * * The revolt of the baronage, easily as it had been subdued, became a pretext for fresh blows at their power. The greatest of these was his Assize of Arms, which restored the national militia to the place which it had lost at the conquest. The substitution of scutage for military service had practically freed the crown from the support of the baronage and their feudal retainers; the assize substituted for this feudal organization the older military obligation of every freeman to serve in the defence of the realm. Every knight was forced to arm himself with coat of mail and shield and lance; every freeholder with lance and hauberk; every burgess and poorer freeman with lance and iron helmet. This universal levy of the armed nation was wholly at the disposal of the king for purposes of defence.

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VI.—YEARS 1217 TO 1257—(HENRY III).

The same loss of spiritual power, the same severance from natural feeling, was seen in the English Church itself. Plundered and humiliated as they were by Rome, the worldliness of the bishops, the oppression of the ecclesiastical courts, the disuse of preaching, the decline of the monastic orders into rich land-owners, the non-residence and ignorance of the parish priests, robbed the clergy of all spiritual influence.

VII.—YEARS 1283 TO 1295—(EDWARD I).

In legislation, as in his judicial reform, Edward did little more than renew and consolidate the principles which had been already brought into practical working by Henry the II. His Statute of Winchester followed the precedent of the "Assize of Arms" in basing the preservation of public order on the revival and development of the local system of frank-pledge. Every man was bound to hold himself in readiness, duly armed for the king's service, or the hue and cry which pursued the felon. Every district was made responsible for crimes committed within its boundaries.* * * The Statute of Mortmain, which prohibited the alienation of lands to the Church under pain of forfeiture, was based on the constitutions of Clarendon, but it is difficult to see in it more than a jealousy of the rapid growth of ecclesiastical estates, which, grudging as it was by their baronage, was probably beneficial to the country at large, as military service was rendered by Church fees as rigidly as by lay, while the Churchmen were the better landlords.* * * We trace the same conservative tendency, the same blind desire to keep things as they were, during an age of rapid transition in the great land law which bears the technical name of the Statute "Quia Emptores." It is one of those legislative efforts which mark the progress of a great social revolution in the country at large. The

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number of the greater barons was in fact diminishing every day, while the number of the country gentry and of the more substantial yeomanry was increasing with the increase of the national wealth. This increase showed itself in the growing desire to become proprietors of land. Tenants of the greater barons received under-tenants on condition of their rendering similar services to those which they themselves rendered to their lords; and the baronage, while duly receiving the services in compensation for which they had originally granted their land in fee, saw with jealousy the feudal profits of these new under-tenants, the profits of wardship or of relief, and the like; in a word, the whole increase in the value of the estate consequent on its sub-division and higher cultivation, passing into other hands than their own. To check this growth of a squirearchy, as we should now term it, the statute provided that in any case of alienation the sub-tenant should henceforth hold, not of the tenant, but directly of the superior lord; but its result seems to have been to promote instead of hindering the sub-division of land. The tenant who was compelled before to retain in any case so much of the estate as enabled him to discharge his feudal services to the over-lord of whom he held it, was now enabled by a process analogous to the sale of "tenant right," to transfer both land and service to new holders.

VIII.—YEARS 1290 TO 1305 (EDWARD II).

(a). In England the town was originally, in every case save that of London, a mere bit of land within the lordship, whether of the king or some great noble or ecclesiastic, whose inhabitants happened, either for purposes of trade or prohibition to cluster together more closely than elsewhere. * * The English town in its beginning was simply a piece of the general country, organised and governed in the same way as the manors around it; that is to say, justice was administered, its annual rent collected, and its customary services exacted by the reeve or steward of the lord to whose estate it belonged. * * But when once these dues were paid, and these services rendered, the English townsman was practically free. His rights were as rigidly defined by custom as those of his lord, property, and person alike were secured against arbitrary seizure. * * * Whenever we get a glimpse of the inner history of an English town, we find the same peaceful revolution in progress, services disappearing, through disuse or omission, while privileges and insecurities are being purchased in hard cash. The lord of the town, whether he were king, baron, or abbot, was commonly thriftless or poor, and the capture of a noble, or the campaign of a sovereign, or the building of some new minster by a prior, brought about an appeal to the thrifty burghers, who were ready to fill again the master's treasury at the price of the strip of parchment which gave them freedom of trade, of justice, and of government.* * For the most part the liberties of our towns were bought in this way by sheer hard bargaining.* * At the close of the thirteenth century, this work of outer emancipation was practically complete.* *

(b). During the progress of this outer revolution, the inner life of the English town was in the same quiet and hardly conscious way developing itself from the common form of the life around it into a form specially

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its own. Within or without the ditch or stockade which formed the first boundary of the borough, land was from the first the test of freedom, and the possession of land was what constituted the townsman. * * In England the "landless" man had no civic, as he had no national existence; the "town" was simply an association of landed proprietors within its bounds; nor was there anything in this association, as it originally existed, which could be considered peculiar or exceptional. The constitution of the English town, however different its form may have afterwards become, was at the first simply that of the people at large. We have before seen that among the German races society rested on the basis of the family; that it was the family who fought and settled side by side, and the kinsfolk who were bound together in ties of mutual responsibility to each other and to the law. As society became more complex and less stationary, it naturally outgrew these simple ties of blood, and in England this dissolution of the family bond seems to have taken place at the very time when Danish incursions and the growth of a feudal temper among the nobles rendered an isolated existence more perilous for the freeman. His only recourse was to seek protection among his fellow freemen, and to replace the older brotherhood of the kinsfolk by a voluntary association of his neighbours for the same purposes of order and self-defence. The tendency to unite in such "Frith-guilds" or Peace-clubs became general throughout Europe during the ninth and tenth centuries, but on the Continent it was roughly met and repressed. The successors of Charles the Great enacted penalties of scourging, nose-slitting, and banishment, against voluntary unions, and even a league of the poor peasants of Gaul against the inroads of the Northmen was suppressed by the sword of the Frankish nobles. In England the attitude of the kings was utterly different. The system of "franc-pledge," or free engagement of neighbour for neighbour, was accepted after the Danish wars as the base of social order. Alfred recognised the common responsibility of the members of the "frith-guild" side by side with that of the kinsfolk, and Athelstan accepted "frith-gilds" as the constituent element of borough life in the Doms of London.

(c). The frith-gild, then, in the earlier English town, was precisely similar to the frith-gilds which formed the bases of social order in the country at large. An oath of mutual fidelity among its members was substituted for the tie of blood, while the gild feast, held once a month in the common hall, replaced the gathering of the kinsfolk round their family hearth. But within this new family the owner of the frith-gild was to establish a mutual responsibility as close as that of the old. "Let all share the same lot," runs the law; "if any misdo, let all bear it." Its member could look for aid from his gild brothers in atoning for any guilt incurred by mishap. He could call on them for assistance in case of violence or wrong; if falsely accused, they appeared in court as his compurgators; if poor, they supported, and when dead they buried him. On the other hand, he was responsible to them, as they were to the State, for order and obedience to the laws. A wrong of brother against brother was also a wrong against the general body of the gild, and was punished by fine, or in the last resort by expulsion, which left the offender a "lawless" man and an outcast. * *

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(d). In their beginnings our boroughs seem to have been mainly gatherings of persons engaged in agricultural pursuits; the first Doms of London provide especially for the recovery of cattle belonging to the citizens. But as the increasing security of the country invited the farmer or the squire to settle apart in his own fields, and the growth of estate and trade told on the towns themselves, the difference between town and country became more sharply defined.

IX.—YEARS 1377 TO 1381—(RICHARD II).

(a). The religious revolution (Wycliffe) which we have been describing gave fresh impulse to a revolution of even greater importance, which had for a long time been changing the whole face of the country. The manorial system on which the social organization of every rural part of England rested, had divided the land, for the purposes of cultivation and of internal order, into a number of large estates, in each of which about a fourth of the soil was usually retained by the owner of the manor as his demesne, or home-farm, while the remainder was distributed, at the period we have reached, among tenants who were found to render service to their lord. We know hardly anything of the gradual process by which these tenants had arisen out of the slave class who tilled the lands of the first English settlers. The slave, indeed, still remained, though the number of pure “serfs” bore a small proportion to the other cultivators of the soil. He was still, in the strictest sense, his lord’s property: he was bound to the soil; he paid head-money for license to remove from the estate in search of trade or hire, and a refusal to return, on recall by his owner, would have ended in his pursuit as a fugitive outlaw.

(b). But even this class had now acquired definite rights of its own; and although we still find instances of the sale of serfs “with their litter,” or family, apart from the land they tilled, yet in the bulk of cases, the amount of service due from the serf had become limited by custom, and on its due rendering, his holding was practically as secure as that of the freest tenant on the estate.

(c). But at a time earlier than any record we possess, the mass of the agricultural population had risen to a position of far greater independence than this, and now formed a class of peasant proprietors, inferior, indeed, to the older Teutonic freeman, but far removed from the original serf. Not only had their service and the time of rendering it become limited by custom, not only had the possession of each man’s little hut with the plot around it and the privilege of hiring out a few cattle on the waste of the manor, passed from mere indulgences granted and withdrawn at a lord’s expense into rights which could be pleaded at law, but the class as a whole were no longer “in the power of the lord.” The claim of the proprietors over peasants of this kind ended with the due rendering of their service in the cultivation of his demesne, and this service might be rendered either personally or by deputy. It was the nature and extent of this labour-rent which determined the rank of the tenants among themselves. The villein, or free-tenant, for instance, was only bound to gather in his lord’s harvest, and to aid in the ploughing and sowing of autumn and Lent, while the cottar, the

bordar, and labourer were bound to aid in the work of the home-farm throughout the year. The cultivation, indeed, of the home-farm, or, as it was then called, the demesne, rested wholly with the tenants; it was by them that the great grange of the lord was filled with sheaves, his sheep sheared, his grain malted, the wood hewn for his hall fire. The extent of those services rested wholly on tradition, but the number of teams, the fines, the reliefs, the heriots which the lord could claim was, at this time, generally entered on the court-roll of the manor, a copy of which became the title-deed of the tenants, and gave them the name of copy-holders, by which they became known at a later period. Disputes were easily settled by the steward of the manor, on reference to this roll or on oral evidence of the custom at issue; but a social arrangement, eminently characteristic of the English spirit of compromise, generally secured a fair adjustment of the claims of employer and employed. It was the duty of the lord's bailiff to exact their dues from the tenantry; but his co-adjutor in this office, the reeve or foreman of the manor, was chosen by the tenants themselves, and acted as the representative of their interests and their rights.

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(d). The first disturbance of the system of tenure which we have described sprang from the introduction of leases. The lord of the manor, instead of cultivating the demesne through his own bailiff, often found it more convenient and profitable to let the manor to a tenant at a given rent, payable either in money or in kind. Thus we find the manor of London leased by the Chapter of St. Paul's at a very early period on a rent which comprised the payment of grain both for bread and ale, of alms to be distributed at the cathedral door, of wood to be used in its bake-house and brewery, and of money to be spent in wages. It is to this system of leasing, or rather to the usual term for the rent it entailed (*feorm*, from the Latin *firma*) that we owe the words "farm" and "farmer," the growing use of which from the twelfth century marks the first step in the rural revolution which we are examining. It was a revolution which made little direct change in the manorial system, but its indirect effect in breaking the tie on which the feudal organization of the manor rested, that of the tenant's personal dependence on his lord, and in affording an opportunity by which the wealthier among the tenantry could rise to a position of apparent equality with their older masters, was of the highest importance.

(e). This earlier step, however, in the modification of the manorial system, of the rise of the farmer class, was soon followed by one of a far more serious character in the rise of the free labourer. Labour, whatever right it might have attained in other ways, was as yet, in the strictest sense, bound to the soil; neither villein nor serf had any choice, either of a master or of a sphere of toil. The tenant was born, in fact, to his holding and to his lord. But the advance of society, and the natural increase of population, had for a long time been silently freeing the labourer from this local bondage. The influence of the Church had been exerted in promoting emancipation, as a work of piety, on all estates but its own. The fugitive bondmen found freedom in a flight to chartered towns, where a residence during a year and a day conferred franchise. The increase of population had a far more

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serious effect. The number of the English people seem to have all but tripled since the conquest, and as the law of gavel-kind, which was applicable to all landed estates not held by military tenure, divided the inheritance of the tenantry equally among their sons, the holding of each tenant and the service due from it became divided in a corresponding degree. The labour-rent thus became more difficult to enforce at the very time that the increase of wealth among the tenantry and the rise of a new spirit of independence made it more burthensome to those who rendered it.

(f). It was probably from this cause that the commutation of the services of labour for a money payment, which had long prevailed on every estate, gradually developed into a general commutation of service. We have already witnessed the silent progress of this remarkable change in the case of St. Edmondsbury, but the practice soon became universal, and "malt silver," "wood silver," and "larder silver" were gradually taking the place of the older personal services on the court rolls, at the opening of the fourteenth century. Under the Edwards the process of commutation was hastened by the necessities of the lords themselves. The luxury of the time, the splendour and pomp of chivalry, the cost of incessant campaigns, drained the purses of knight and baron, and the sales of freedom to the serf or exemption from services to the villein afforded an easy and tempting mode of refilling them. In this process Edward III. himself led the way; commissioners were sent to royal estates for the special purpose of selling manumissions to the king's serfs, and we still possess the names of those who were enfranchised with their families by a payment of hard cash in aid of the exhausted exchequer.

(g). By this entire detachment of the serf from actual dependence on the land, the manorial system was even more radically changed than by the rise of the serf into a copyholder. The whole social condition of the country, in fact, was modified by the appearance of a new class. The rise of the free labourer had followed that of the farmer, but labour was no longer bound to one spot or one master; it was free to hire itself to which employer and to choose what field of employment it would. At the close of Edward's reign, in fact, the lord of a manor had been reduced over a large part of England to the possession of a modern landlord, receiving a rental in money from his tenants, and dependent for the cultivation of his own demesne on hired labour; while the wealthier of the tenants themselves often took the demesne on lease as its farmers, and thus created a new class intermediate between the larger proprietors and the customary tenants.

(h). The impulse towards a wider liberty given by the extension of this process of social change was soon seen on the appearance for the first time in our history of a spirit of social revolt. A parliamentary statute of this period (1377) tells us that villeins and tenants of land on villeinage withdrew their customs and services from their lords, having attached themselves to other persons who maintained and abetted them, and who, under colour of exemplifications from Domesday of the manors and villas where they dwelt, claim to be quit of all manner of services, either of their body or of their lands, and would suffer no distress or other course of justice to be taken against them;

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the villeins aiding their maintainers by threatening the officers of their lords with peril to life and limb, as well by open assemblies as by confederacies to support each other. The copyholder was struggling to become a freeholder, and the farmer (perhaps) to be recognised as proprietor of the demesne which he held on lease.

(i). It was while this struggle was growing in intensity, that a yet more formidable difficulty met the lords who had been driven by the enfranchisement of their serfs to rely on hired labour. Everything depended on the abundant supply of free labourers, and this abundance suddenly disappeared. The most terrible plague which the world ever witnessed (the Black Death, 1349) advanced at this juncture from the East, and after devastating Europe from the shores of the Mediterranean to the Baltic, swooped at the close of 1348 upon Britain. The traditions of its destructiveness, and the panic-struck words of the statutes which followed it, have been more than justified by modern research. Of the three or four millions who then formed the population of England, more than one-half were swept away in its repeated visitations. * *

(k). The whole organization of labour was thrown out of gear. The scarcity of hands made it difficult for the minor tenants to perform the services due for their lands, and only a temporary abandonment of half the rent by the land-owners induced the farmers to refrain from the abandonment of their farms. For the time, cultivation became impossible. "The sheep and cattle strayed through the fields and corn," says a contemporary, "and there were none who could drive them. Even when the first burst of panic was over, the sudden rise of wages consequent on the enormous diminution in the supply of free labour, though accompanied by a corresponding rise in the price of food, rudely disturbed the course of industrial employments; harvests rotted on the ground, and fields were left untilled, not merely from the scarcity of hands, but from the strife which now for the first time revealed itself between capital and labour.

(l). While the land-owners of the country and the wealthier craftsmen of the town were threatened with ruin by what seemed to their age the extravagant demands of the new labour class, the country itself was torn with riot and disorder. The outbreak of lawless self-indulgence which followed everywhere in the wake of the plague told especially upon the "landless men," wandering in search of work, and for the first time masters of the labour market; and the wandering labourer or artisan turned easily into the "sturdy beggar," or the bandit of the woods. A summary redress for these evils was found by the Parliament and the crown in a royal ordinance, which was subsequently embodied in the statute of labourers. "Every man or woman," runs this famous Act, "of whatsoever condition, free or bond, able in body, and within the age of three score years, . . . and not having of his own whereof he may live, nor land of his own about the tillage of which he may occupy himself, and not serving any other, shall be bound to serve the employer who shall require him to do so, and shall take only the wages which were accustomed to be taken in the neighbourhood where he is bound to serve" two years before the plague began. A refusal to obey was punished by imprisonment.

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(m). Sterner measures were soon found to be necessary. Not only was the price of labour fixed by the Parliament of 1350, but the labour class was once more tied to the soil. The labourer was forbidden to quit the parish where he lived in search of better-paid employment; if he disobeyed, he became a "fugitive," and subject to imprisonment at the hands of the justices of the peace. To enforce such a law literally must have been impossible, for corn had risen to so high a price that a day's labour at the old wages would not have purchased wheat enough for a man's support. But the land-owners did not flinch from the attempt. The repeated re-enactment of the law shows the difficulty of applying it, and the stubbornness of the struggle which it brought about. The prices and forfeitures which were levied for infractions of its provisions formed a large source of royal revenue, but so ineffectual were the original penalties, that the run-away labourer was at last ordered to be branded with a hot iron on the forehead, while the harbouring serfs in towns was rigorously put down.

(n). Nor was it merely the existing class of free-labourers which was attacked by this re-actionary movement. Not only was the process of emancipation suddenly checked, but the ingenuity of the lawyers, who were employed as stewards of each man, or was recklessly exercised in cancelling, on grounds of informality, manumissions and exemptions which had passed without question, and in bringing back the villein and the serf into a bondage from which they held themselves free. * * The cry of the poor found a terrible utterance in the words of a mad priest of Kent (John Ball), as the courtly Froissart calls him. * * It was the tyranny of property that then, as ever, roused the defiance of socialism. A spirit fatal to the whole system of the middle ages breathed in the popular rhyme which condensed the levelling doctrine of John Ball;—"When Adam delved and Eve spau, who was then the gentleman?"

X.—YEARS 1381 TO 1399.

(a). (After describing the insurrection under Wat Tyler) the strife, indeed, which Longland would have averted raged only the fiercer after the repression of the Peasant Revolt. The Statutes of labourers, effective as they proved in sowing hatred between rich and poor, and in creating a mass of pauperism for later times to deal with, were powerless for their immediate ends, either in reducing the actual rate of wages, or in restricting the mass of floating labour to definite areas of employment. During the century and a half after the Peasant Revolt, villeinage died out so rapidly that it became a rare and antiquated thing. A hundred years after the Black Death, we learn from a high authority that the wages of an English labourer "commanded twice the amount of the necessities of life which could have been obtained for the wages paid under Edward III." * *

(b). But there were seasons of the year during which employment for this floating mass of labour was hard to find. In the long interval between harvest-tide and harvest-tide, work and food were alike scarce in the mediæval homestead. * * During the long spring and summer the free labourer, and the "waster that will not work but wander about,

that will eat no bread but the finest wheat, nor drink but of the best and brownest ale," was a source of social and political danger. "He grieveth him against God and grudgeth against reason, and then curseth he the king and all his council after such law to allow labourers to grieve." The terror of the land-owners expressed itself in legislation, which was a fitting sequel of the Statutes of Labourers. They forbade the child of any tiller of the soil to be apprenticed in a town. They prayed Richard to ordain "that no bondman nor bondwoman shall place their children at school, as has been done, so as to advance their children in the world by their going into the church." The new colleges which were being founded at the two Universities at this moment closed their gates upon villeins.

(c). It was the failure of such futile efforts to effect their aim which drove the energy of the great proprietors into a new direction, and in the end revolutionised the whole agricultural system of the country. Sheep farming required fewer hands than tillage, and the scarcity and high price of labour tended to throw more and more land into sheep farms. In the decrease of personal service, as villeinage died away, it became the interest of the lord to diminish the number of tenants on his estate, as it had been before his interest to maintain it; and he did this by massing the small allotments together into larger holdings. By this course of eviction the number of the free-labour class was enormously increased, while the area of employment was diminished; and the social danger from vagabondage and the "sturdy beggar" grew every day greater till it brought about the despotism of the Tudors.

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XI.—YEARS 1450 TO 1471.

Yeomen and tradesmen formed the bulk of the insurgents under John Cade. The "complaint of the Commons of Kent," which they laid before the Royal Council, is of enormous value in the light which it throws on the condition of the people. So utterly had Lollardism been extinguished, that not one of the demands touches on religious reform. The old social discontent seems to have subsided. The question of villeinage and serfage, which had roused Kent to its desperate rising in 1381, finds no place in its "complaint" of 1450. In the seventy years which had intervened, villeinage had died naturally away before the progress of social change. The Statutes of Apparel, which begin at this time to encumber the Statute Book, show in their anxiety to curtail the dress of the labourer and the farmer the progress of these classes in comfort and wealth; and from the language of the Statutes themselves it is plain that as wages rose, both farmer and labourer went on clothing themselves better in spite of sumptuary provisions. With the exception of a demand for the repeal of the Statute of Labourers, the programme of the Commons was now not social, but political.

XII.—YEARS 1471 TO 1509—(EDWARD IV TO HENRY VII).

(a). With the battle of Towton, which crushed the House of Lancaster, feudalism vanished away. The baronage lay a mere wreck after the storm of the Civil War. The church lingered helpless and perplexed till

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Para. 6, contd. it was struck down by Thomas Cromwell. The traders and the smaller proprietors sank into political inactivity. On the other hand, the Crown, which only fifty years before had been the sport of every faction, towered into solitary greatness. The old English kingship, limited by the forces of feudalism or by the progress of constitutional freedom, faded suddenly away, and in its place we see, all absorbing and unrestrained, the despotism of the New Monarchy, by which name we express the character of the English sovereignty from the time of Edward IV to the time of Elizabeth. There is no kind of similarity between the kingship of the old English, the Norman, the Angevin, or the Plantagenet sovereigns and the kingship of the Tudors. The difference between them was the result, not of any gradual development, but of a simple revolution; and it was only by a revolution that the despotism of the New Monarchy was again done away. When the lawyers of the Long Parliament fell back for their precedents of constitutional liberty to the reign of the House of Lancaster, and silently regarded the whole period which we are about to traverse as a blank, they expressed not merely a legal truth, but an historical one. What the Great Rebellion in its final result actually did was to wipe away every trace of the New Monarchy, and to take up again the thread of our political development just where it had been snapped by the Wars of the Roses. But revolutionary as the change was, we have already seen in their gradual growth the causes which brought about the revolution. The social organization from which our political constitution had hitherto sprung, and on which it still rested, had been silently snapped by the progress of industry, by the growth of spiritual and intellectual enlightenment, and by changes in the art war. Its ruin was precipitated by religious persecution, by the disfranchisement of the Commons, and by the ruin of the baronage in the civil strife. Of the great houses some were extinct, others lingered only in obscure branches which were mere shadows of their former greatness. With the exception of the Poles, the Stanleys, and the Howards, themselves families of recent origin, hardly a fragment of the older baronage interfered from this time in the work of government. Neither the church nor the smaller proprietors of the country, who with the merchant citizens formed the Commons, were ready to take the place of the ruined nobles. * * The church still trembled at the progress of the new heresy, and clung for protection to the Crown. The close corporations of the towns needed protection for their privileges. The land-owners shared with the trader a profound horror of the war and disorder which they had witnessed, and an almost reckless desire to entrust the Crown with any power which would prevent its return.

(b). But above all, the landed and monied classes clung passionately to the Monarchy, as the one great force left which could save them from social revolt. The rising of the Commons of Kent shows that the troubles against which the statutes of labourers had been directed still remained as a formidable source of discontent. The great change in the character of agriculture, indeed, which we have before described,—the throwing together of the smaller holdings, the diminution of tillage, the increase of pasture lands—had tended largely to swell the numbers and turbulence of the floating labour class. The riots against “enclosures,”

of which we first hear in the time of Henry the Sixth, and which became a constant feature of the Tudor period, are indications not only of a constant strife going on in every quarter between the land-owner and the smaller peasant class, but of a mass of social discontent which was constantly seeking an outlet in violence and revolution. And at this moment the break-up of the military households of nobles by the attainders and confiscations of the Wars of the Roses, as well as by the Statute of Liveries which followed them, added a new element of violence and disorder to the seething mass. It is this social danger which lies at the root of the Tudor despotism. For the proprietary classes the repression of the poor was a question of life and death. The land-owner and the merchant were ready, as they have been ready in all ages of the world, to surrender freedom into the hands of the one power which could preserve them from what they deemed to be anarchy. It was to the selfish panic of wealthier land-owners that England owed the statute of labourers, with their terrible heritage of a pauper class. It was to the selfish panic of both the land-owner and the merchant that she owed the despotism of the New Monarchy. * *

(c). The necessity for summoning the two houses had, in fact, been removed by the enormous tide of wealth which the confiscations of the civil war poured into the Royal treasury. In the single bill of attainder which followed the victory of Towton, twelve great nobles and more than a hundred knights and squires were stripped of their estates to the king's profit. It was said that nearly a fifth of the land passed into the Royal possession at one period or another of the civil war.

XIII.—YEARS 1509 TO 1520.

More's Utopia.—It is as he wanders through this dreamland of the new reason that More touches the great problems which were fast opening before the modern world—problems of labour, of crime, of conscience, of government. Merely to have seen and to have examined questions such as these would prove the keenness of his intellect; but its far-reaching originality is shown in the solutions which he proposes. Amidst much that is the pure play of an exuberant fancy, much that is mere recollection of the dreams of by-gone dreamers, we find again and again the most important social and political discoveries of later times anticipated by the genius of Thomas More. In some points, such as his treatment of the question of labour, he still remains far in advance of current opinion. The whole system of society around him seemed to him “nothing but a conspiracy of the rich against the poor.” Its economic legislation was simply the carrying out of such a conspiracy by process of law. “The rich are ever striving to pare away something further from the daily wages of the poor by private fraud and even by public law, so that the wrong already existing (for it is a wrong that those from whom the State derives most benefit should receive least reward) is made yet greater by means of the law of the State.” “The rich devise every means by which they may in the first place secure to themselves what they have amassed by wrong, and then take to their own use and profit, at the lowest possible price, the work and labour of the poor. And so soon as the rich decide on adopting these devices in

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the name of the public, then they become law." The result was the wretched existence to which the labour class was doomed, "a life so wretched that even a beast's life seems enviable." No such cry of pity for the poor, of protest against the system of agrarian and manufacturing tyranny, which had found its expression in the Statutes of Labourers, had been heard since the days of Piers Ploughman. But from Christendom, More turns with a smile to "Nowhere." In "Nowhere" the aim of legislation is to secure the welfare, social, industrial, intellectual, religious, of the community at large, and of the labour class as the true basis of a well-ordered commonwealth.

Aggregation
of farms.

XIV.—YEARS 1515 TO 1531.

(a). Wolsey's defeat in the endeavour to levy a property-tax of 20 per cent. saved English freedom for the moment; but the danger from which he shrank was not merely that of a conflict with the sense of liberty. The murmurs of the Kentish squires only swelled the ever-deepening voice of public discontent. If the condition of the land question in the end gave strength to the Crown by making it the security for public order, it became a terrible peril at every crisis of conflict between the monarchy and the land-owners. The steady rise in the price of wool was at this period giving a fresh impulse to the agrarian changes which had been going steadily on for the last hundred years, to the throwing together of the smaller holdings, and the introduction of sheep-farming on an enormous scale. The merchant classes, too, whose prosperity we have already noticed, were investing largely in land, and "these farming gentlemen and clerking-knights," as Latimer bitterly styled them, were restrained by few traditions or associations in their eviction of the smaller tenants. The land, indeed, had been greatly underlet; "that which went heretofore for twenty or forty pounds a year," we learn from the same source, "now is let for fifty or a hundred;" and the new purchasers were quick in making profit by a general rise in rents. It had been only by the low scale of rent, indeed, that the small yeomanry class had been enabled to exist. "My father," says Latimer, "was a Yeoman, and had no lands of his own; only he had a farm of three or four pounds by the year at the uttermost, and hereupon he tilled so much as kept half-a-dozen men. He had walk for a hundred sheep, and my mother milked thirty kine; he was able and did find the king a harness with himself and his horse, while he came to the place that he should receive the king's wages. He kept me to school; he married my sisters with five pounds a piece, so that he brought them up in godliness and fear of God. He kept hospitality for his poor neighbours, and some alms he gave to the poor, and all this he did of the same farm, where he that now hath it payeth sixteen pounds by year or more, and is not able to do anything for his prince, for himself, nor for his children, or give a cup of drink to the poor."

(b). The bitterness of ejection was increased by the iniquitous means which were employed to bring it about. The farmers, if we believe More, were "got rid of either by fraud or force, or tired out with repeated wrongs into parting with their property." "In this way it comes to pass that these poor wretches, men, women, husbands, orphans, widows,

parents with little children, house-holds greater in number than in wealth (for arable farming requires many hands, while one shepherd and herdsman will suffice for a pasture farm),—all these emigrate from their native fields without knowing where to go.” The sale of their scanty household stuff drove them to wander homeless abroad, to be thrown into prison as vagabonds, to beg and to steal. Yet in the face of such a spectacle as this, we still find the old complaint of scarcity of labour, and the old legal remedy for it in a fixed scale of wages. The social disorder, in fact, baffled Wolsey’s sagacity, and he could find no better remedy for it than laws against the further extension of sheep-farms, and a terrible increase of public executions. Both were alike fruitless. Enclosures and evictions went on as before. “If you do not remedy the evils which produce thieves,” More urged with better truth, “the rigorous execution of justice in punishing thieves will be vain.” But even More could suggest a remedy which, efficacious as it subsequently was to prove, had yet to wait a century for its realization. “Let the woollen manufacture be introduced, so that honest employment may be found for those whom want has made thieves, or will make thieves ere long.” The mass of social disorder grew steadily greater; while the break up of the great military households of the nobles, which was still going on, and the return of wounded and disabled soldiers from the wars, introduced a yet more dangerous leaven of outrage and crime.

APP.
XXVIII.

AGGREGATION
OF FARMS.

PARA. 6, CONTD.

XV.—YEARS 1530 TO 1540—(HENRY THE EIGHTH).

(a). As an outlet for religious enthusiasm, indeed, monasticism was practically dead. The friar, now that his fervour of devotion and his intellectual energy had passed away, had sunk into the mere beggar. The monks had become mere land-owners. Most of their houses were anxious only to enlarge their revenues, and to diminish the number of those who shared them. In the general carelessness which prevailed as to the religious objects of their trust, in the wasteful management of their estates, in the indolence and self-indulgence which for the most part characterized them, the monastic houses simply exhibited the faults of all corporate bodies which have outlived the work which they were created to perform. But they were no more unpopular than such corporate bodies generally are. The Lollard cry for their suppression had died away. In the north, where some of the greatest abbeys were situated, the monks were on good terms with the country gentry, and their houses served as schools for their children; nor is there any sign of a different feeling elsewhere. But in Thomas Cromwell’s system there was no room for either the virtues or the vices of monarchism, for its indolence and superstition, or for its independence both of the episcopate and the throne. * *

Suppression of
monasteries.

(b). But in spite of the cry of “Down with them” which broke from the Commons as the report of the Royal Commissioners on Monasteries was read, the country was still far from desiring the utter downfall of the monastic system. A long and bitter debate was followed by a compromise which suppressed all houses whose income was below £200 a year, and granted their revenues to the Crown; but the great abbeys were still preserved intact.

APP. XVI.—YEARS 1540 TO 1553—(HENRY VIII AND EDWARD VI).

XXVIII.

DISSOLUTION OF
MONASTERIES.

Para. 6, contd.

(a). And to this revival of a spirit of independence Henry largely contributed in the spoliation of the church and the dissolution of the monasteries. Partly from necessity, partly from a desire to create a large party interested in the maintenance of their ecclesiastical policy, Cromwell and the king squandered the vast mass of wealth which flowed into the treasury with reckless prodigality. Something like a fifth of the actual land in the kingdom was in this way transferred from the holding of the church to that of nobles and gentry. Not only were the older houses enriched, but a new aristocracy was erected from among the dependants of the Court. The Russells, Cavendishes, and Fitz-Williams, are familiar instances of families which rose from obscurity through the enormous grants of church land made to Henry's courtiers. The old baronage was hardly crushed before a new aristocracy took its place. * * The leading part which the new peers took in the event which followed Henry's death gave a fresh strength and vigour to the whole order. But the smaller gentry shared in the general enrichment of the landed proprietors, and the new energy of the lords was soon followed by a display of fresh political independence among the Commons themselves. * * *

(b). One noble measure, indeed, the foundation of eighteen Grammar schools, was destined to throw a lustre over the name of Edward, but it had no time to bear fruit in his reign. All that men saw was religious and political chaos, in which ecclesiastical order had perished, and in which politics were dying down into the squabbles of a knot of nobles over the spoils of the church and the Crown. The plunder of the chantries and the guilds failed to glut the appetite of the crew of spoilers. Half the lands of every see were flung to them in vain; the see of Durham had been wholly suppressed to satisfy their greed; and the whole endowments of the church were now threatened with confiscation. But while the courtiers gorged themselves with manors, the treasury grew poorer. The coinage was debased. Crown lands to the value of five millions of our modern money had been granted away to the friends of Somerset and Warwick.

.XVII.—YEARS 1559 TO 1603—(ELIZABETH).

oor Laws.

(a). In one act of her civil administration Elizabeth showed the boldness and originality of a great ruler; for the opening of her reign saw her face the social difficulty which had so long impeded English progress, by the issue of a commission of inquiry which solved the problem by the system of poor-laws. * *

(b). She had hardly mounted the throne when she faced the problem of social discontent. Time and the natural development of new branches of industry were working quietly for the relief of the glutted labour-market; but, as we have seen under the Protectorate, a vast mass of disorder still existed in England, which found a constant ground of resentment in the enclosures and evictions which accompanied the progress of agricultural change. It was on this host of "broken men" that every rebellion could count for support; their mere existence, indeed, was

an encouragement to civil war, while in peace their presence was felt in the insecurity of life and property, in gangs of marauders which held whole countries in terror, and in "sturdy beggars" who stripped travellers on the road. Under Elizabeth, as under her predecessors, the terrible measures of repression, whose uselessness More had in vain pointed out, went pitilessly on; we find the magistrates of Somersetshire capturing a gang of a hundred at a stroke, hanging fifty at once on the gallows, and complaining bitterly to the Council of the necessity for waiting till the assizes before they could enjoy the spectacle of the fifty others hanging besides them.

APP.
XXVIII.
—
POOR LAWS.
—
Para. 6, contd.

(c). But the issue of a Royal Commission to enquire into the whole matter enabled the Queen (1562) to deal with the difficulty in a wiser and more effectual way. The old powers to enforce labour on the idle, and settlement on the vagrant class, were continued; and a distinction made as in former acts between these and the impotent and destitute persons who had been confounded with them; and each town and parish was held responsible for the relief of its indigent and disabled poor, as it had long been responsible for the employment of able-bodied mendicants. When voluntary contributions proved insufficient for this purpose, the justices in sessions were enabled by statute to assess all persons in a town or parish who refused to contribute in proportion to their ability. The principles embodied in these measures—the principle of local responsibility for local distress, and that of a distinction between the pauper and the vagabond—were more clearly defined in two statutes which marked the middle period of Elizabeth's reign. In 1572, houses of correction were established for the punishment and amendment of the vagabond class by means of compulsory labour; in 1597, power to levy and assess a general rate in each parish for the relief of the poor was transferred from the justices to its church-wardens. The well-known Act which matured and finally established this system, the 43rd of Elizabeth, remained the base of our system of pauper administration until a time within the recollection of living men. Whatever flaws a later experience has found in these measures, their wise and humane character formed a striking contrast to the legislation which had degraded our statute-book from the date of the Statute of Labourers; and their efficiency at the time was proved by the entire cessation of the great social danger against which they were intended to provide.

(d). Its cessation, however, was owing, not merely to law, but to the natural growth of wealth and industry throughout the country. The change in the mode of cultivation, whatever social embarrassment it might bring about, undoubtedly favoured production. Not only was a larger capital brought to bear upon the land, but the mere change in the system brought about a taste for new and better modes of agriculture; the breed of horses and of cattle was improved, and a far greater use made of manure and dressings. One acre under the new system produced, it was said, as much as two under the old. As a more careful and constant cultivation was introduced, a greater number of hands were required on every farm; and much of the surplus labour, which had been flung off the land on the commencement of the new system, was thus recalled to it.

APP.
XXVIII.

MANUFACTURES.

Para. 6, contd

(e). But a far more efficient agency in absorbing the unemployed was found in the development of manufactures. The linen trade was as yet of small value, and that of silk-weaving was only just introduced. But the woollen manufacture had become an important element in the national wealth. England no longer sent her fleeces to be woven in Flanders and to be dyed in Florence. The spinning of yarn, the weaving, frilling, and dyeing of cloth, was spreading rapidly from the towns over the country side. The worsted trade, of which Norwich was the centre, extended over the whole of the eastern counties. The farmers' wives began everywhere to spin their wool from their own sheep's backs into a coarse "home-spun." The South and the West still remained the great seats of industry and of wealth, the great homes of mining and manufacturing activity. The iron manufactures were limited to Kent and Sussex, though their prosperity in this quarter was already threatened by the growing scarcity of the wood which fed their furnaces, and by the exhaustion of the forests of the weald. Cornwall was then, as now, the sole exporter of tin, and the exportation of its copper was just beginning. The broad-cloths of the West claimed the palm among the woollen stuffs of England. * * But in the reign of Elizabeth the poverty and inaction to which the North had been doomed since the fall of the Roman rule begins at last to be broken. We see the first signs of the coming revolution which has transferred English manufacturers and English wealth to the north of the Mersey and the Humber, in the mention which now meets us of the friezes of Manchester, the coverlets of York, and the dependence of Halifax on its cloth-trade. * *

(f). But it was not wholly with satisfaction that either Elizabeth or her ministers watched the social change which wealth was producing around them. They feared the increased expenditure and comfort which necessarily followed it, as likely to impoverish the land and to eat out the hardihood of the people. "England spendeth more in wines in one year," complained Cecil, "than it did in ancient times in four years." The disuse of salt-fish and the greater consumption of meat marked the improvement which was taking place among the agricultural classes. Their rough and wattled farm-houses were being superseded by dwellings of brick and stone. Pewter was replacing the wooden trenchers of the earlier yeomanry; there were yeomen who could boast of a fair show of silver plate. It is from this period, indeed, that we can first date the rise of a conception which seems to us now a peculiarly English one, the conception of domestic comfort.

XVIII.—YEARS 1629 TO 1640—(CHARLES I.).

The people were as stubborn as their king. * * * Meanwhile they would wait for better days, and their patience was aided by the general prosperity of the country. The long peace was producing its inevitable results in a vast extension of commerce and a rise of manufactures in the towns of the West Riding of Yorkshire. Fresh land was being brought into cultivation, and a great scheme was set on foot for reclaiming the fens. The new wealth of the country gentry, through the increase of rent, was seen in the splendour of the houses which they were raising.

XIX.—YEARS 1646 TO 1660.

APP.
XXVIII.CROMWELL'S
IRONSIDES
—
Para. 6, cont'd

(a). All chance of setting up Presbyteries throughout the country hung, however, on the disbanding of the New Model, and the New Model showed no will to disband itself. Its new attitude can only be fairly judged by remembering what the conquerors of Naseby really were. They were soldiers of a different class and of a different temper from the soldiers of any other army that the world has seen. Their ranks were filled for the most part with young farmers and tradesmen of the lower sort, maintaining themselves, for their pay was twelve months in arrear, mainly at their own cost. They had been specially picked as "honest" or religious men; and whatever enthusiasm or fanaticism they may have shown, their very enemies acknowledged the order and piety of their camp. They looked on themselves, not as swordsmen to be caught up and flung away at the will of a paymaster, but as men who had left farm and merchandise at a direct call from God. A great work had been given them to do, and the call bound them till it was done. Kingcraft, as Charles was hoping, might yet restore tyranny to the throne. * * They would wait before disbanding till these liberties were secured, and if need came they would again act to secure them. But their resolve sprang from no pride in the brute force of the sword they wielded. On the contrary, as they pleaded passionately at the bar of the Commons, "on becoming soldiers we have not ceased to be citizens." Their aims and proposals throughout were purely those of citizens, and of citizens who were ready, the moment their aim was won, to return peacefully to their homes. * *

(b). In his progress to the capital, Charles II passed in review the soldiers assembled on Blackheath. Betrayed by their general, abandoned by their leader, surrounded as they were by a nation in arms, the gloomy silence of their ranks awed even the careless king with a sense of danger. But none of the victories of the New Model were so glorious as the victory which it won over itself. Quietly, and without a struggle, as men who bowed to the inscrutable will of God, the farmers and traders who had dashed Rupert's chivalry to pieces on Naseby field, who had scattered at Worcester the "army of the aliens," and driven into helpless flight the sovereign that now came to enjoy his own again," who had renewed beyond sea the glories of Cressy and Agincourt, had mastered the Parliament, had brought a king to justice and the block, had given laws to England, and held even Cromwell in awe, became farmers and tradesmen again, and were known among their fellow-men by no other sign than their great soberness and industry. And with them, Puritanism laid down the sword. It ceased from the long attempt to build up a Kingdom of God by force and violence, and fell back on its truer work of building up a kingdom of righteousness in the hearts and consciences of men. It was from the moment of its seeming fall that its real victory began. As soon as the wild orgy of the Restoration was over, men began to see that nothing that was really worthy in the work of Puritanism had been undone. The revels of Whitehall, the scepticism and debauchery of courtiers, the corruption of Statesmen, left the mass of Englishmen what Puritanism had made them, serious, earnest, sober in life and conduct, firm in their love of Protestantism and of

APP.
XXVIII.—
PURITANISM.
Para. 6, contd.

freedom. In the Revolution of 1688 Puritanism did the work of civil liberty which it had failed to do in that of 1642. It wrought out through Wesley and the revival of the eighteenth century the work of religious reform which its earlier efforts had only thrown back for a hundred years. Slowly but steadily it introduced its own seriousness and purity into English society, English literature, English politics. The whole history of English progress since the Restoration, on its moral and spiritual side, has been the history of Puritanism.

XX.—1712 TO 1742—(QUEEN ANNE TO GEORGE II).

In 1724 the king could congratulate the country on its possession of "peace with all powers abroad, at home perfect tranquillity, plenty, and an uninterrupted enjoyment of all civil and religious rights." Population was growing fast. That of Manchester and Birmingham doubled in thirty years. The rise of manufactures was accompanied by a sudden rise of commerce, which was due mainly to the rapid development of our colonies. Liverpool, which owes its creation to the new trade with the west, spread up from a little country town into the third port in the kingdom. With peace and security, the value of land, and with it the rental of every country gentleman, tripled; while the introduction of winter roots, of artificial grasses, of the system of a rotation of crops, changed the whole character of agriculture, and spread wealth through the farming classes. The wealth around him never made Walpole swerve from a rigid economy, from the steady reduction of the debt, or the diminution of fiscal duties. Even before the death of George the First, the public burdens were reduced by twenty millions. * *

The unpopularity of the Excise remained unabated, and even philosophers like Locke contended that the whole public revenue should be drawn from direct taxes upon the land. Walpole, on the other hand, saw in the growth of indirect taxation a means of freeing the land from all burdens whatever.

XXI.—YEARS 1742 TO 1760—(GEORGE II).

There was no doubt a revolt against religion and against churches in both the extremes of English society. In the higher circles "every one laughs," said Montesquieu on his visit to England, "if one talks of religion." Of the prominent statesmen of the time, the greater part were unbelievers in any form of Christianity, and distinguished for the grossness and immorality of their lives. * * Purity and fidelity to the marriage vow was sneered out of fashion. * * At the other end of the social scale lay the masses of the poor. They were ignorant and brutal to a degree which it is hard to conceive, for the vast increase of population which followed on the growth of towns and the development of manufactures had been met by no effort for their religious or educational improvement. Not a new parish had been created. Hardly a single new church had been built. Schools there were none, save the grammar schools of Edward and Elizabeth. The rural peasantry, who were fast being reduced to pauperism by the abuse of the poor laws, were

left without moral or religious training of any sort. "We saw but one Bible in the parish of Cheddar," said Hannah More at a far later time, "and that was used to prop a flower pot." * * In spite, however, of scenes such as this, England as a whole remained at heart religious. In the middle class the old piety lived unchanged, and it was from this class that a religious revival burst forth at the close of Walpole's ministry, which changed in a few years the whole temper of English society. The church was restored to life and activity. Religion carried to the hearts of the poor a fresh spirit of moral zeal, while it purified our literature and our manners.

* * But the Methodists themselves were the least result of the Methodist revival. Its action upon the church broke the lethargy of the clergy, and the "evangelical" movement, which found representatives like Newton and Cecil within the pale of the establishment, made the fox-hunting parson and the absentee rector at least impossible. In Walpole's day the English clergy were the idlest and most lifeless in the world. In our own time, no body of religious ministers surpasses them in piety, in philanthropic energy, or in popular regard. In the nation at large appeared a new moral enthusiasm which, rigid and pedantic as it often seemed, was still healthy in its social tone, and whose power was seen in the disappearance of the profligacy which had disgraced the upper classes, and the foulness which had infested literature, ever since the restoration. But the noblest result of the religious revival was the steady attempt, which has never ceased from that day to this, to remedy the guilt, the ignorance, the physical suffering, the social degradation of the profligate and the poor. It was not till the Wesleyan movement had done its work that the philanthropic movement began.

APP.
XXVIII.

METHODIST
REVIVAL.

Para. 3, contd.

XXII.—YEARS 1783 TO 1789—(GEORGE III).

(a). The progress of the nation itself was wonderful. Population more than doubled during the eighteenth century, and the advance of wealth was even greater than that of population. The war had added a hundred millions to the national debt, but the burden was hardly felt. The loss of America only increased the commerce with that country. Industry began that great career which was to make England the workshop of the world. During the first half of the century the cotton trade, of which Manchester was the principal seat, had only risen from the value of twenty to that of forty thousand pounds; and the handloom retained the primitive shape which is still found in the handlooms of India. But three successive inventions in ten years—that of the spinning-machine in 1768 by the barber Arkwright, of the spinning-jenny in 1764 by the weaver Hargreaves, of the mule by the weaver Crompton in 1776—turned Lancashire into a hive of industry. * * The cheapness of the new mode of transit (canal), as well as the great advance in engineering science, brought about a development of English collieries which soon gave coal a great place among our exports. Its value as a means of producing mechanical force was revealed in the discovery by which Watt in 1765 transformed the steam-engine from a mere toy into the most wonderful instrument which human industry has ever had at its command.

Material
progress.

APP.
XXVIII.CHANGES IN
AGRICULTURE.Para 6, *contd.*

(b). The same energy was seen in the agricultural change which passed gradually over the country. Between the first and the last years of the eighteenth century a fourth part of England was reclaimed from waste and brought under tillage. At the Revolution of 1688 more than half the kingdom was believed to consist of moorland and forest and fen; and vast commons and wastes covered the greater part of England north of the Humber. But the numerous enclosure Bills which began with the reign of George II, and especially marked that of his successor, changed the whole face of the country. Ten thousand square miles of untilled land have been added under their operation to the area of cultivation; while in the tilled land itself the production had been more than doubled by the advance of agriculture, which began with the travels and treatises of Arthur Young, the introduction of the system of large farms by Mr. Coke of Norfolk, and the development of scientific tillage in the valleys of Lothian.

XXIII.—YEARS 1793 TO 1815—(GEORGE III).

(a). The increase of wealth was indeed enormous. England was sole mistress of the seas. The war had given her possession of the colonies of Spain, of Holland, and of France; and if her trade was checked for a time by the Berlin decrees, the efforts of Napoleon were soon rendered fruitless by the vast smuggling system which sprang up along the coast of North Germany. In spite of the far more serious blow which commerce received from the quarrel with America, English exports nearly doubled in the last fifteen years of the war. Manufactures profited by the great discoveries of Watt and Arkwright, and the consumption of raw cotton in the mills of Lancashire rose during the same period from fifty to a hundred millions of pounds. The vast accumulation of capital, as well as the constant recurrence of bad seasons at this time, told upon the land, and forced agriculture into a feverish and unhealthy prosperity. Wheat rose to famine prices, and the value of land rose in proportion with the price of wheat. Inclosures went on with prodigious rapidity; the income of every land-owner was doubled, while the farmers were able to introduce improvements into the processes of agriculture which changed the whole face of the country.

(b). But if the increase of wealth was enormous, its distribution was partial. During the fifteen years which preceded Waterloo, the number of the population rose from ten to thirteen millions, and this rapid increase kept down the rate of wages, which would naturally have advanced in a corresponding degree with the increase in the national wealth. Even manufactures, though destined in the long run to benefit the labouring classes, seemed at first rather to depress them. One of the earliest results of the introduction of machinery was the ruin of a number of small trades which were carried on at home, and the pauperisation of families who relied on them for support. In the winter of 1811 the terrible pressure of this transition from handicraft to machinery was seen in the Luddite, or machine-breaking, riots which broke out over the northern and midland counties, and which were only suppressed by military force. While labour was thus thrown out of its olden grooves, and the rate of wages kept down at an artificially low figure by the rapid

increase of population, the rise in the price of wheat, which brought wealth to the land-owner and the farmer, brought famine and death to the poor, for England was cut off by the war from the vast corn-fields of the Continent or of America, which now-a-days redress from their abundance, the results of a bad harvest. Scarcity was followed by a terrible pauperisation of the labouring classes. The amount of the poor-rate rose 50 per cent., and with the increase of poverty followed its inevitable result the increase of crime.

APP.
XXVIII.
—
CHANGES IN
AGRICULTURE.
—
Para. 7.

XXIV.—YEARS 1815 TO 1873.

The peace which closed the great war with Napoleon left Britain feverish and exhausted. * * The pressure of the heavy taxation, and of the debts which now reached eight hundred millions, was embittered by the general distress of the country. The rapid development of English industry for a time ran ahead of the world's demands; the markets at home and abroad were glutted with unsaleable goods, and mills and manufactories were brought to a standstill. The scarcity caused by a series of bad harvests was intensified by the selfish legislation of the land-owners in Parliament. Conscious that the prosperity of English agriculture was merely factitious, and rested on the high price of corn produced by the war, they prohibited by an Act passed in 1815 the introduction of foreign corn till wheat had reached famine prices. Society, too, was disturbed by the great changes of employment consequent on a sudden return to peace after twenty years of war, and by the disbanding of the immense forces employed at sea and on land. The movement against machinery, which had been put down in 1812, revived in the formidable riots of the Luddites, and the distress of the rural poor brought about a rapid increase of crime.

7. Down to the wars of the Roses the rights of freemen were conjoined with the possession of land in fee-simple or in copyhold, in town and village. After that period there grew up a class of labourers who obtained freedom at the price of severance from the land. For a time the ravages of the plague created a demand for their labour; then a rise in the price of wool, and the consequent abandonment of much tillage, for pasturage lessened the demand; until the growth of woollen manufactures, and later, of other industries, caused migration of rural labourers to towns. In the agricultural districts also there sprang up, towards the close of the last century and in the beginning of the present, a demand for labour from the extension of tillage on the large farm system which was brought about by the high price of corn, and the inclosure of commons by landed proprietors. The stimulus of a high price of corn continued for some time after the repeal of the corn laws; but from a rise in the price of meat the land under tillage has again receded, and that under pasturage has increased, a result that will be aggravated by

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XXVIII.CHANGES IN
AGRICULTURE.

Para 7, contd.

the very considerable fall in the price of wheat which has lately supervened, and which is still in progress. As more land is being devoted to pasturage, the demand for agricultural labour is reduced. At the same time the prosperity of the pasture lands depends on the prosperity of the manufacturing industries in towns, now threatened by the decreasing dependence of foreign countries on British manufactures. The changes which in the slow course of centuries have reduced the labourer to this precarious condition, have destroyed to a great extent the class of peasant-proprietors; the yeomanry are extinct. During those same centuries the lower middle class, including yeomen and peasant-proprietor, exerted more effectually than any other class a healthful, energising, renovating influence on the liberties, the moral condition, and the religious life of the English people.

PROFESSOR
CLIFFE LESLIE.

8. The following extracts are from Professor T. E. Cliffe Leslie's *Land Systems and Industrial Economy of Ireland, England, and Continental Countries* :—

Decline of the
rural population,
now the thinnest
and most joyless
peasantry in the
civilised world.

I. (a). Paradoxical as it may be, especially in contrast with the progress of England in trade and manufactures, and the progressive rise of the cultivators of the soil in all other civilised countries, from the Southern States of America to Russia, it is strictly true that the condition of the English rural population in every grade below the landed gentry has retrograded; and, in fact, there is no longer a true rural population remaining for the ends, political, social, and economic, which such a population ought to fulfil. The grounds of the assertion are well known to students of our social history; but it is necessary to a sufficient presentment of the state of the land question to show what they are.

(b). The different grades which are still sometimes, in unconscious irony, spoken of as the landed interest, once had a common interest in the land; an unbroken connection both with the soil and with each other subsisted between the landed gentry, the yeomanry who farmed their own estate, the tenant-farmers, and the agricultural labourers. From the yeomanry who owned land downwards, moreover, each of the rural grades had risen politically, economically, and socially; and there was for the members of each a prospect of a higher personal elevation and a larger interest in the soil. Now the landed yeomanry, insignificant in number, and a nullity in political power, are steadily disappearing altogether; the tenant-farmers have lost the security of tenure, the political independence, and the prospect of one day farming their own estate, which they formerly enjoyed; and lastly, the inferior peasantry not only have lost ground in the literal sense, and have rarely any other connection with the soil than a pauper's claim, but have sunk deplorably in other economical aspects below their condition in former centuries. Thus a soil eminently adapted by natural gifts to sustain a numerous and flourishing rural population of every grade, has almost the thinnest and absolutely the most joyless peasantry in the civilised world, and its chief end, as

regards human beings, seems only to be a nursery of over-population and misery in cities.

(c). The landed yeomanry at the head of the triple agricultural class, once so numerous in England, were many of them the descendants of peasants who had held their land in villeinage, or by a yet more servile tenure; and in the sixteenth century, after villeinage had become extinct, we find their numbers in spite of a succession of adverse circumstances, still recruited from a humble rank, and themselves recruiting one above them. * *

APP.
XXVIII.
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PROFESSOR
CLIFFE LESLIE.
—
Para 8, contd.

"These," Lord Macaulay concludes—and the conclusion is important—were they that intimes past made all France afraid." The important and independent part which such small land-owners continued long to fill in both the social and political world, has attracted the notice of all historians. In the last quarter of the seventeenth century their number exceeded that of the tenant-farmers, amounting at the most moderate estimate "to not less than 160,000 proprietors, who with their families must have made more than a seventh of the whole population." How great a change in the English polity is made by the gradual disappearance and political annihilation of this ancient order, and the absorption of their territorial influence and representation along with their estates by a higher class, must strike any reader of the passage in which Lord Macaulay briefly points their former place in constitutional history. "A large portion of the yeomanry had from the Reformation leaned towards Puritanism; had in the civil war taken the side of Parliament; had after the Reformation persisted in hearing Presbyterian and independent preachers; had at the elections strenuously supported the exclusionists; and had continued, even after the discovery of the Rye House Plot and the prescription of the whig leaders, to regard Popery and arbitrary power with unmitigated hostility." * * *

Decline of the
yeomanry.

II. (a). England, says a distinguished Englishman on the Continent, referring particularly to the researches of a German economist, is the only Teutonic community—we believe we might say the only civilised community—in which the bulk of the land under cultivation is not in the hands of small proprietors; clearly, therefore, England represents the exception and not the rule. * *

Cause of dis-
appearance of
small properties.

1870—

Briefly enumerated, the chief causes by which the peasantry—the really most important class—has been dispossessed of their ancient proprietary rights and beneficial interest in the soil are seven, of which four are the following:—

(1). Confiscation of their ancient rights of common, which were not only in themselves of great value, but most important for the help they gave towards the maintenance of their separate lands.

(2). Confiscation to a large extent of their separate lands themselves, by a long course of violence, fraud, and chicane, in addition to forfeitures resulting from deprivation of their rights of common.

(3). The destruction of country towns and villages, and the loss in consequence of local markets for the produce of peasant farms and gardens.

(4). The administration by the great land-owners of their own estates in such a manner as to impoverish the peasantry still further, and to sever their last remaining connection with the soil.

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Para. 8, contd.

Inclosure of
commons ruined
peasant pro-
prietors.

(b). These different causes have necessarily been mentioned in succession, but in reality they have often operated simultaneously. The one first stated was the first, however, to operate on an extensive scale. * * Some centuries ago the greater part of England was still uninclosed, and to a large extent subject to common use; the lord of the manor being himself a co-partner, as it were, both in the system of husbandry followed on the arable land and in the pastoral, and wood rights enjoyed in common. * * Taken together, the common and "commonable" rights constituted no small part of the villager's means of living, enabling him to keep no less than forty sheep, besides as many cows as he had winter food for. * * Mr. Morier pertinently remarks that the inclosures of the sixteenth century are usually spoken of as though denoting merely the conversion of arable into pasturage, and the consolidation of farms, without reference to the primary fact which governs the two, *viz.*, the inclosure, not of arable land as such, but of *commonable* arable land. * * The peasantry lost not only the benefits derived from rights of commons over the greater part of England, but that loss, in numerous cases, entailed the loss of their separate fields. They had lived on the produce of the two, and their husbandry was based on it. They were the more unequal to the augmented rents and fines demanded of them that they had lost the sustenance of their stock. * * This was not all. The small proprietor, the freehold tenant, the copyholder, and the tenant for years, were ejected from their own fields as they had been from their commons. * * Mr. Morier sums up the dealings of the great proprietors with the villagers' fields (with which their own lands lay mixed under the ancient system of common husbandry) as follows:—

(c). In the most favourable cases, the withdrawal of one-third or one-half of the land from the "commonable" arable land of a township, such half or third portion consisting in many cases of small parcels intermixed with those of the commoners, must have rendered the further common cultivation impossible, and thereby compelled the freeholders and copyholders to part with their land and their common rights on any terms. That in less favourable cases the lords of the manor did not look very closely into the rights of their tenants, and that instead of an equitable repartition of land between the two classes, the result was a general consolidation of tenants' land with demesne land, the creation of large enclosed farms, with the consequent wholesale destruction of agricultural communities or townships, is well known to every reader of history. * *

1867—

Every grade of
the rural popu-
lation has sunk.

III. Thus every grade of the rural population has sunk: the landed yeomanry are almost gone; the tenant-farmers have lost their ancient independence and interest in the soil; the labourers have lost their separate cottages and plots of ground and their share in a common fund of land; and whereas all these grades were once rising, the prospect of the landed yeomanry is now one of total extinction; that of the tenant-farmers increasing insecurity; that of the agricultural labourer, to find the distance between his own grade and the one above him wider and more impassable than ever, while the condition of his own grade is scarcely above that of the brutes. Once, from the meanest peasant to the greatest noble, all had land, and he who had least might hope for

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Para. 8, contd.

more; now, there is being taken away from him who has little even that which he has, his cottage, nay his separate room. Once there was an ascending movement from the lowest grade towards the highest, now there is a descending movement in every grade below the highest. * * The very steps by which the villein rose, as Sir James Shuttleworth describes them, are now lost to the peasantry of England. "Our ancient Saxon polity had a representative constitution in which the villein gradually rose to participate, and that just in proportion as he was admitted to the possession of property independently of the lord of the soil. The gradual transition from the occupation of land by villeinage to the cultivation of loan land, and the freedom of the tenant to migrate, to carry with him his acquisition, and to acquire land as a personal possession, are the chief steps of advance of the small class of villeins to the class of small tenant-farmers, and to the establishment of the independent class of yeomen and "statesmen" who cultivated their own land. Only one of these steps can now be said to remain—the freedom to migrate; and the consequence is a forced and unnatural migration from the country to a few great manufacturing towns and the metropolis, largely swollen by other circumstances (also connected with our territorial system) which limit to a few centres the space for manufactures and urban employments. * *

IV. "The sub-division of land increases the gross no less than the net produce. In general, the smaller the farm, the greater the produce of the soil. Cultivators and proprietors alike rejoice in the sub-division; the former, because it places more land within their reach, the latter, because it doubles their rents." When to this we add the consideration that the farm produce for which England is best suited requires, as Mr. Caird states, an immensity of labour, and that, as Mr. Thornton expresses it, "English agriculture would be exceedingly benefited by the application to it of at least double the actual quantity of labour," we may pronounce that England is fitted by nature to support an immense rural population in comfort; that landlords in clearing their estates of the labourers' little farms and cottages to diminish pauperism, have fallen into the common error of mistaking the prevention for the disease; that the immense migration from the country to the city has been a forced and unnatural movement; and that the misery and decline of the English rural population is the result of a system adverse to the interests of all classes, not excepting the proprietors of the soil. But the evils of the system do not end here. As it has cramped and misdirected the industry of the country, so has it the industry of the town; and the migration of the peasantry has been accompanied by another forced movement of the population to a few great cities, to which urban industry has been in a great measure unnaturally restricted. The result is, that enormously disproportionate numbers are huddled together in a space which yearly becomes less as those numbers increase; that the town population, like that of the country, has yearly less room for its growth; that the mass of the labouring population is degenerating both in country and in town, and that a land question has arisen in our cities, more imperatively demanding solution than even the land question in the country. * *

Yet England is fitted by nature to support an immense rural population in comfort.

V. (a). The whole population of England doubles in about fifty-two years; but the chief increase is in the large towns, and most of all in the

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Para. 8, contd.

Population de-
generating both
in town and
country.

metropolis, where most of all the space for human habitation rapidly decreases. We are thus coming to a deadlock both in country and in town, for want of bare room for the people to live in, while there is land enough and to spare. Already the population is degenerating both in town and country. The barrister threading the crowded lanes and courts between the Strand and Lincoln's Inn has noticed year by year the signs of a degenerating race upon old and young; and now they, too, have been displaced to swell the numbers in some more crowded and more squalid haunts. In the country, the degeneracy of the race is its most striking feature; intelligence is almost extinct among the rural poor; and in no other civilised land, and even in few savage lands, has any class of human being a look so cheerless, so unreasoning, so little human as the English agricultural labourer, without the light either of intelligence or of animal spirits on his sullen face.

Middle classes
injured.

(b). But the working classes are not the only sufferers. Already the dwellings of the middle classes in great cities not only are becoming dear beyond their means, but are beginning to disappear altogether; and they too will find before long that there is no room for them in either country or town, and that they have before them only the hard choice of the ancient Britons.

And a higher
class endan-
gered.

(c). And the danger threatens a higher class still. A landless and houseless population will ere long be brought face to face with a few thousand engrossers of the soil, who seldom can sell or divide it, or make adequate leases of it if they would, but who will be charged with the consequence, with making "pleasure-ground" as the *Times* recently called it, of all the land in the kingdom, while the nation has not enough for bare existence.

(d). Nor does the danger beset all classes only from within. We are coming closer year by year to both Europe and America; and if we are to hold a place, not to say as a great, but even as a small independent state, we must find room for the nation to grow, and to grow in health and strength; we must find room for increasing numbers of men to live as men, and not as rats.

Not the least
portentous
change is the
growing sever-
ance of the
peasantry from
the soil.

VI. (a). Not the least portentous among the changes in the classes which constitute the landed interest in England, is that growing severance of the peasantry from the soil, and that increasingly selfish and exclusive use of dominion over it by its proprietors, of which M. de Tocqueville speaks as follows: "An aristocracy does not die like a man in a day. Long before open war has broken out against it, the bond which had united the higher classes with the lower is seen to loosen by degrees; the relations between the rich and the poor become fewer and less kindly; rents rise. This is not actually the result of democratic revolution, but it is its certain indication. For an aristocracy which has definitively let the heart of the people slip from its hands, is like a tree which is dead at its roots, and which the winds overturn the more easily the higher it is. I have often heard great English proprietors congratulate themselves that they derive much more money from their estates than their fathers did. They may be in the right to rejoice, but assuredly they do not know at what they rejoice. They imagine they are making a net profit, when they are only making an exchange. What they gain in money they are on the point of losing in power."

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PARA. 9.

There can be no attachment to the institutions of a country in which the whole of a peasantry exist on sufferance.

(b). There is yet another sign that a great democratic movement is being accomplished or is in preparation. In the middle age almost all landed property was let in perpetuity, or at least for a very long term. When one studies the economy of that period, one finds that leases for ninety years were commoner than leases for twelve years are now. In his celebrated essay on M. de Tocqueville's book, Mr. Mill has, with similar prescience, remarked that without a large agricultural class, with an attachment to the soil, a permanent connection with it, and the tranquillity and simplicity of rural habits and tastes, there can be no check to the total predominance of an unsettled, uneasy, gain-seeking, commercial democracy. "Our town population," it has long been remarked, "is becoming almost as mobile and uneasy as the American. It ought not to be so with our agriculturists; they ought to be the counterbalancing element in the national character; they should represent the type opposite to the commercial, that of moderate wishes, tranquil tastes, and cultivation of the enjoyments compatible with the existing position. To attain this object, how much alteration may be requisite in the system of rack-renting and tenancy-at-will we cannot undertake to show in this place." So, in a late debate upon Irish tenures in Parliament, it was argued with unanswerable force by Mr. Gregory, in reference to the tenure now generally prevalent in the island: "There could be no attachment to the institutions of a country in which the whole of a peasantry existed merely on sufferance; certainly there was nothing conservative in tenancies-at-will; indeed, he believed such tenancies to be the most revolutionary in the world." The conclusion is irresistible that the true revolutionary party in Ireland are unconsciously and unwillingly, but not the less certainly, the owners of land.

9. The next extract will be from Mr. John Macdonell's work on the Land Question with particular reference to England and Scotland.

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I. (a). There were, moreover, other benefits of a more palpable character, which have been lost. Before the commons were parcelled out, there existed potent and well understood checks on the over-growth of population; most of the rural poor were then proprietors, not, indeed, of the *directum dominium*, but of a substantial *usus*. The truth is too often forgotten. How rarely is it recollected that it is only in very modern times that England came to be peopled by persons wholly devoid of proprietorial rights! Our present condition is chiefly the work of the eighteenth and nineteenth centuries. Our present artificial state—artificial whether Lord Derby or Mr. Bright is right as to the number of land-owners,—is most modern. Long after the destruction of the bulk of our yeomen, and the diminution of small holdings during the French wars, the mass of the people were to all intents and purposes proprietors. If they did not own the entire *dominium*, neither did the lord of the manor. If they were not the owners of the fee-simple, still they were possessed of some claims over the land. The pertinent circumstance is, that far into the eighteenth century and into this century England was inhabited by persons who, whether free-holders or copy-holders, or cottiers, or residents in towns possessing rights of common, owned proprietorial rights over the soil, and that the present homeless character

The present homeless character of the bulk of the people came to pass within living memory.

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Para. 9, contd.

A preventive
check on popu-
lation is removed
when the people
are dissevered
from the land.

of the bulk of the people came to pass within living memory. Even if the labourers were not really occupiers of the soil with fixity of tenure, estover, turbary, pasturage, rights of common appurtenant, appendant, or in gross, were valuable and substantial qualities, and the ownership of some or any of them severed the hind of those days as much from the hind of our day as he is severed from a tiller of the Pays du Waes. In the light of a sound polity this partnership was often a salutary circumstance. All the partners had a plain intelligible standard whereby to regulate their lives. Families must be shaped to get the land or *usus* at their disposal. Too many for the land, too many to live. No part in the agricultural communities, no part in life. The sequence was direct and most clear. All could understand that most pitiless logic.

(b). Now, it is a matter of history that countries, the population of which has been greatly dependent for sustenance on the soil, have been rarely troubled with pauperism, and *à fortiori*, this would hold good of smaller communities the precise means of which were still more visible. But all cannot understand the dependence of wages on capital, an abstraction about the extent and nature of which even experts, not to say the uninitiated, are interminably disputing. Then, too, prudence in such a situation told most speedily and visibly to one's individual benefit. Now, a man's individual hand is palsied by the thought that, labour as he may, the imprudence of others may efface all traces of his forethought. Telling a labourer to contrast the size of his family, is telling him to swim hard in order that another man, not necessarily he, may reach the shore. If there were then no historical evidence, we should unhesitatingly conclude that a system which indicated in figures the exact number of vacancies or berths could not be a salutary check on population. Indeed, Tusser, in his rhymed arguments for enclosures, expressly states that a leading recommendation of enclosures was their tendency to augment population.

(c). From the preceding sketch it will be apparent that the manner in which the commons have been divided has been by no means in unison with justice to all concerned, or in accordance with their origin. Once almost every dweller in a manor, unless, indeed, such as were not freemen, had a share in the produce of the common. Perhaps the lord's right always was, until the day of division, of a purely honorary character. Perhaps his legal estate may have been as empty and valueless as the legal estate of a trustee. If he ventured to put up a wall or fence to hinder the commoners' cattle from grazing, it would be cast down. To all intents and purposes the commoners, and not he, owned the common. But when a division takes place, those whose rights over the common are of a substantial character may get almost nothing, while those whose rights are a figment of law may get almost everything; the former are stripped of immemorial enjoyments, and the latter are gifted with powers which were never theirs before; and the lord's right at common law to the shell is converted into a right to the oyster itself.

* * *

II. If the student of the history of English land tenures were asked to compress the substance of his researches into small space, doubtless he would reply that from early times until now there has been going on, slowly, with long halts and some retrogression, a process tending to

reduce the number of persons exercising privileges over, and drawing revenues from, the soil, without discharging functions of commensurate value. The usufructuary and the fructifier tend to be the same. * * Very many curious, complicated, and onerous, are the tenures which we find in old English law; and their conversion into common socage tenures produced great good in the realm. Blackstone puts the effects before those of Magna Charta itself; so much was done to strip the tree of the parasitical growth around it. In the history of villeinage, we have, perhaps, a chapter of the same tale. In the villein, it is commonly alleged, though with doubtful accuracy, that we have the predecessor of the copy-holder, whose tenure originally "base," and with all the incidents of baseness attaching to it, was in course of time transformed into a tenure differing little in point of value from that of the free-holder. We know that all of these villeins were not manumitted without a struggle. "We will that ye make us free for ever; ourselves, our heirs, and our lands; and that we be called no more bond, or so reputed." These were the dignified terms in which the peasants in 1382 made their demands. They were cajoled by empty, false promises. No sooner were they rendered impotent by deceit, than the promises which they had received were recalled. There was another chapter of this history completed when tithes were commuted. Though these still remain as a charge on the land, they do not any longer directly touch the cultivator. He no longer only partially gathers the fruits of his labour.

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PALL MALL
BUDGET.
Para. 10.

10. "PALL MALL BUDGET" (1879).

An eminent and original French economist, M. Maurice Block, has commented on the change which in fifty years or a century has occurred in the distribution of population in all civilized countries. M. Block's ideal of a happily circumstanced community is one in which there is a due proportion between the part of the population collected in towns and occupied in manufacturing industry, and the part engaged in agriculture. In such a state the growth of industrial activity and prosperity would pretty fairly keep pace with an increase of agricultural production. But the two striking phenomena which have characterized the last half-century have been, first, the enormous augmentation in some countries of the number of men and women inhabiting them; and in all countries (not even excepting the United States), the growing tendency of both the old and the new population to flock into cities and towns.

The growing tendency of both old and new populations to dis sever from the land and flock into cities, and towns.

These urban populations are generally much too numerous for the food-producing powers of the rest of the country to support, and they are practically occupied in manufacturing articles of use and luxury to be sold for corn and meat to the communities which are still possessed of surplus soil. The result is a prodigious complication of the economical mechanism by which the inhabitants of towns are fed and kept alive. It is a mechanism which extends over the whole world, barbarous as well as civilised. The maker of calicoes has not the smallest means of knowing for what class of customers the wares in which he labours are ultimately destined. * * Conversely, the loaf eaten by the Sheffield weaver may come from any corner of the world. * * Thus it is that

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BUDGET.

Para. 10, contd.

With great
land-owners the
people of Eng-
land will be a
town-bred
people, unfit to
defend the coun-
try; and the
country will be
the luxury of the
rich.

a great part of the population of Western Europe sells the produce of its labour to the whole world, and sweeps together its food from the whole world.

11. MR. J. A. FROUDE—(*January 1870*).

I. For a certain class of people—for the great land-owners, the great merchants, great bankers, great shop-keepers, great manufacturers, whose business is to make money, whose whole thoughts are set on making money and enjoying the luxuries which money can command—no doubt it would be a very fine world. Those who are now rich would grow richer; wealth, in the modern sense of it, would be enormously increased; suburban palaces would multiply, and conservatories and gardens, and farther off the parks and pleasant preserves. Land would continue to rise in value, and become more and more the privilege of those who could afford the luxury of owning it. From those classes we hear already a protest against emigration. * *

II. But these classes, powerful though they may be, and in Parliament a great deal too powerful, are not the people of England. They are not a twentieth, they are not a hundredth, part of it; and what sort of future is it to which, under the present hypotheses, the ninety-nine are to look forward? The greatness of a nation depends upon the men whom it can breed and rear. The prosperity of it depends upon its strength; and if men are sacrificed to money, the money will not be long in following them. How is the further development of England along the road on which it has been travelling at such rate for the last twenty years likely to affect the great mass of the inhabitants of this island? We have conquered our present position, because the English are a race of unusual vigour, both of body and mind,—industrious, energetic, ingenious, capable of great muscular exertion, and remarkable along with it for equally great personal courage. If we are to preserve our place, we must preserve the qualities which won it. Without them all the gold in the planet will not save us. Gold will remain only with those who are strong enough to hold it; and unless these qualities depend on conditions which cannot be calculated, and which therefore need not be considered, the statesman who attends only to what he calls the production of wealth, forgets the most important half of the problem which he has to solve.

III. Under the conditions which I have supposed, England would become, still more than it is at present, a country of enormous cities. The industry on which its prosperity is dependent can only be carried on where large masses of people are congregated together, and the tendency already visible towards a diminution of the agricultural population would become increasingly active. Large estates are fast devouring small properties; large farms, small farms; and this process will continue. Machinery will supersede human hands. Cattle breeding, as causing less expenditure in wages, will drive out tillage. A single herdsman or a single engineer will take the place of ten or twenty of the old farm labourers. Land will rise in value. Such labourers as remain may be better paid. Such as are forced into the towns may earn five shillings where they now earn three; but as a class, the village population will dwindle away.

Even now, while the increase has been so great elsewhere, their numbers remain stationary. The causes now at work will be more and more operative. The people of England will be a townbred people. The country will be the luxury of the rich.

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Para. 11, contd.

IV. Now it is against all experience that any nation can long remain great which does not possess, or having once possessed has lost, a hardy and abundant peasantry. Athens lost her dependencies, and in two generations the sun of Athens set. The armies which made the strength of the Roman republic were composed of the small free-holders of Latium and afterwards of Italy. When Rome became an empire, the free-holder disappeared; the great families bought up the soil and cultivated it with slaves, and the decline and fall followed by inevitable consequence. Tyre, Carthage, or if these antiquated precedents are to pass for nothing, Venice, Genoa, Florence, and afterwards the Low Countries, had their periods of commercial splendour. But their greatness was founded on sand. They had wealth, but they had no rank and file of country-bred men to fall back upon, and they sank as they had risen. In the American civil war the enthusiastic clerks and shop-boys from the eastern cities were blown in pieces by the Virginian riflemen. Had there been no western farmers to fight the south with men of their own sort, and better than themselves, the star banner of the Confederacy would still be flying over Richmond. The life of cities brings with it certain physical consequences, for which no antidote and no preventive has yet been discovered. When vast numbers of people are crowded together, the air they breathe becomes impure, the water polluted. The hours of work are unhealthy; occupation passed largely within doors thins the blood and wastes the muscles, and creates a craving for drink, which re-acts again as poison. The town child rarely sees the sunshine; and light, it is well known, is one of the chief feeders of life. What is worse, he rarely or never tastes fresh milk or butter, or even bread which is unbewitched. The Bolton operative may live as long as his brother on the moors, but though bred originally perhaps in the same country home, he has not the same bone and stature, and the contrast between the children and grandchildren will be increasingly marked. Any one who cares to observe a gathering of operatives in Leeds or Bradford, and will walk afterwards through Beverley on a market day, will see two groups which, comparing man to man, are like pigmies beside giants. A hundred labourers from the wolds would be a match for a thousand weavers. The tailor confined to his shop-board has been called the ninth part of a man. There is nothing special in the tailor's work so to fractionize him beyond other indoor trades. We shall be breeding up a nation of tailors. In the great engine factories and iron works we see large sinewy men, but they are invariably country-born. Their children dwindle as if a blight was on them. Artisans and operatives of all sorts who work in confinement are so exhausted at the end of their day's labour, that the temptations of the drink-shop are irresistible. As towns grow, drunkenness grows, and with drunkenness come diminished stamina and physical decrepitude. * * And besides drunkenness there are other vices and other diseases, not peculiar to towns perhaps, but especially virulent and deadly there, which tend equally to corrupt the blood and weaken

City life deteriorates the population.

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Para. 11, contd.

the constitution. Every great city becomes a moral cesspool, into which profligacy has a tendency to draw, and where, being shut out from light, it is amenable to no control. * * Disease and demoralization go hand in hand, undermining and debilitating the physical strength, and over-civilisation creates in its own breast the sorcs which will one day kill it. A growth of population we must have to keep pace with the nations round us, and unless we can breed up part of our people in occupations more healthy for mind or body than can be found in the coal-pit and the workshop; unless we preserve in sufficient numbers the purity and vigour of our race, if we trust entirely to the expansion of towns, we are sacrificing to immediate and mean temptations the stability of the empire which we have inherited. If we are to take hostages of the future we require an agricultural population independent of and beside the towns. * *

V. Thus the sweeping brush has been applied to the statute-book and the complicated provisions established by our ancestors, for our minds and bodies have been either cleared away, or at least neutralised, by the absence of machinery to make them effective. * * Property in land, once peculiarly the object of legislative supervision, is left to economic law. The Parliaments of the Tudors, considering in their way the greatest happiness of the greatest number, charged themselves with the distribution of the produce of the soil. They encouraged the multiplication of yeomen and peasant-proprietors. They attached four acres of land to every poor man's cottage. They prohibited the enclosures of commons and the agglomeration of farms; and by reducing the power of the landlords to do as they would with their own, they corrected the tendency which is now unresisted towards the absorption of the land in a diminishing number of hands. The modern theory is, that the greater the interest of the landlord in his property, the more he is encouraged to develop the resources of it.

Small properties absorbed in large: land has become a mere investment of capital.

VI. The country squire of the last century, whether he was a Squire Western or a Squire Allworthy, resided for the greater part of his life in the parish where he was born. The number of free-holders was four times what it is at present; plurality of estates was the exception; the owner of land, like the peasant, was virtually *ascriptus glebe*, a practical reality in the middle of the property committed to him. A London house was unthought of; a family trip to the Continent as unimaginable as an outing to the moon. * * In the present day, the great estates have swallowed up the small. The fat ears of corn have eaten up the lean. The same owner holds properties in a dozen counties. He cannot reside upon them all, or make personal acquaintance with his multiplied dependants. He has several country residences. He lives in London half the year, and most of the rest upon the Continent. Inevitably he comes to regard his land as an investment; his duty to it the development of its producing powers; the receipt of his rents the essence of the connection, and his personal interest in it the sport which it will provide for himself and his friends. Modern landlords frankly tell us that if the game laws are abolished, they will have lost the last temptation to visit their country seats. If this is their view of the matter, the sooner they sell their estates and pass them over to others to a whom life has not yet ceased to be serious, the better it will be

for the community. They complain of the growth of democracy and insubordination; the fault is wholly in themselves;—they have lost the respect of the people because they have ceased to deserve it. * * At the end of the sixteenth century an Act passed obliging the landlord to attach four acres of land to every cottage on his estate. The Act itself was an indication that the tide was on the turn. The English villein, like the serf all over Europe, had originally rights in the soil, which were only gradually stolen from him. The Statute of Elizabeth was a compromise reserving so much of the old privilege as appeared indispensable for a healthy life.

VII. The four acres shrivelled like what had gone before: but generations had to pass before they had dwindled to nothing, and the labourer was inclosed within his four walls to live upon his daily wages.

VIII. Similarly, in most country parishes there were tracts of common land, where every householder could have his flock of sheep, his cow or two, his geese or his pig; and milk and bacon so produced went into the limbs of his children, and went to form the large English bone and sinew which are now becoming things of tradition. The thicket or the peat bog provided fuel. There were spots where the soil was favourable, in which it was broken up for tillage, and the poor families in rotation raised a scanty crop there. It is true that the common land was wretchedly cultivated. What is every one's property is no one's property. * * An inclosed common taken in hand by a man of capital produces four, five, or six times what it produced before. But the landlord who enters on possession is the only gainer by the change. The cottagers made little out of it; but they made something, and that something to them was the difference between comfort and penury. The inclosed land required some small additional labour. A family or two was added to the population on the estate, but a family living at the lower level to which all had been reduced. The landlord's rent-roll shows a higher figure, or, it may be, he has only an additional pheasant preserve. The labouring poor have lost the faggot on their hearths, the milk for their children, the slice of meat at their own dinners.

IX. Even the appropriation of the commons has not been sufficient without closer farming. When the commons went, there was still the liberal margin of grass on either side of the parish roads, to give pickings to the hobbled sheep or donkey. The landlord, with the right of the strong, which no custom can resist, is now moving forward his fences, taking possession of these ribands of green, and growing solid crops upon them. The land is turned to better purpose. The national wealth in some inappreciable way is supposed to have increased, but the only visible benefit is to the lord of the soil, and appears in some added splendour to the furniture of his drawing-room.

12. Mr. James Caird's optimist views are in striking contrast to the warnings of the preceding writers—

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I.—MR. JAMES CAIRD (*English Agriculture in 1850-51*).

(1). (a). It appears that in a period of 80 years since 1770, the average rent of arable land has risen 100 per cent., the average produce of wheat per acre has increased 14 per cent., the labourer's wages 34 per cent., and

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his cottage rent 100 per cent. ; while the price of bread, the great staple of the food of the English labourer, is about the same as it was in 1770. The price of butter has increased 100 per cent., meat about 70 per cent., and wool upwards of 100 per cent.

(b). The increase of 14 per cent. on the average yield of wheat per acre does not indicate the total increased produce. The extent of land in cultivation in 1770 was, without doubt, much less than it is now ; and the produce given then was the average of a higher quality of land, the best having, of course, been earliest taken into cultivation. The increase of acreable corn produce has therefore been obtained by better farming, notwithstanding the contrary influence arising from the employment of inferior sorts. The increased breadth now under wheat bears, however, no proportion to the increase of rent in the same period ; and the price of wheat now is much the same as it was then. We must therefore look to the returns from stock to explain the discrepancy.

(c). While wheat has not increased in price, butter, wheat, and wool, have nearly doubled in value. The quantity produced has also greatly increased, the same land now carrying larger cows, cattle which arrive at earlier maturity, and of greater size, and sheep of better weight and quality, and yielding more wool. On dairy farms, and on such as are adapted for the rearing and feeding of stock, especially of sheep stock, the value of the annual produce has kept pace with the increase of rent. With the corn farms the case is very different. In former times the strong clay lands were looked upon as the true wheat soils of the country. They paid the highest rent, the heaviest tithe, and employed the greatest number of labourers. But modern improvements have entirely changed their position. The extension of green crops and the feeding of stock have so raised the productive quality of the light lands, that they now produce corn at less cost than the clays, with the further important advantage that the stock maintained on them yields a large profit besides. In all parts of the country, accordingly, we have found the farmers of strong clays suffering the most severely under the recent depression of prices.

II.—RENT.

(a). The influence of proximity to large populations in enhancing the rent of land, varies in different parts of the country. The lowest rented counties in England are Surrey, Sussex, and Durham, two of which may be said to be in the vicinity of the metropolis, and the third has a large and well-employed population. The highest rented counties are Lancashire and the West Riding, many of which are continuous villages, and both contain a large proportion of grass land. In 1770, distance from the metropolis seems to have in a great measure regulated the rent, which begins, according to Arthur Young, at 19s. 6d. in Berkshire, and gradually falls to 7s. 6d. in Cumberland. But the means of communication in his time are described by him as " execrable." * * Matters are changed now. We have railways traversing every part of the country, steam vessels sailing from almost every port, and generally good roads of accommodation between every village and market town.

(b). Rent, in so far as regulated by external circumstances, depends now on other influences than proximity to, or distance from, the metro-

polis. * * The great corn-growing counties of the east coast are thus shown to yield an average rent of 23s. 8d. an acre; the more mixed husbandry of the midland counties, and the grazing green crop and dairy districts of the west, 31s. 5d. This striking difference, being not less than 80 per cent., is explained chiefly by the different value of their staple produce, as already shown; corn, the staple of the east coast, selling at the same price as it did 80 years ago, while dairy produce, meat, and wool, have nearly doubled in value. The difference in rent does not arise from a greater fertility of soil, as may be seen by comparing the produce of wheat. The corn counties, in so far as they yield barley and feed or produce cattle and sheep, benefit by the rise in price. * *

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(c). That the large capitalist farmer of the east coast, possessing the most cheaply cultivated soil, and conducting his agricultural operations with the most skill, should not only pay the lowest rent, but be the loudest complainer under the depression of prices, is to be accounted for by his greater dependence on the value of corn. The moistness of the climate of the west, on the other hand, discouraged corn cultivation, and compelled a greater reliance on stock. And, as the country becomes more prosperous, the difference in the relative value of corn and stock will gradually be increased. The production of vegetables and fresh meat, hay for forage, and pasture for dairy cattle, which were formerly confined to the neighbourhood of towns, will necessarily extend as the houses become more numerous and populous. The facilities of communication must increase this tendency. Our insular position, with a limited territory, and an increasingly dense manufacturing population, is yearly extending the circle within which the production of fresh food, animal, vegetable, and forage, will be needed for the daily and weekly supply of the inhabitants and their cattle, and which, both on account of its bulk, and the necessity of having it fresh, cannot be brought from distant countries. Fresh meat, milk, butter, vegetables, and hay, are articles of this description. They can be produced in no country so well as our own, both climate and soil being remarkably suited to them. * * Every intelligent farmer ought to keep this steadily in view; let him produce as much as he can of the articles which have shown a gradual tendency to increase in value. The farms which eighty years ago yielded £100 in meat and wool, or in butter, would now produce £200, although neither the breed of stock nor the capabilities of the land had been improved. Those which yielded £100 in wheat then, would yield no more now, even if the productive power of the land had undergone no diminution by a long course of exhaustion. * * The safe course for the English agriculturist is to endeavour, by increasing his live-stock, to render himself less dependent on corn; while he at the same time enriches his farm by their manure, and is thus enabled to grow heavier crops at less comparative cost.

III.—LEASES.

Leases are the exception throughout England, and though we have found them more prevalent in the west, there has been no sufficient uniformity to account in any degree for the difference of rent.

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* * The tenantry in Stafford hold chiefly on yearly tenures, and prefer to do so, having the utmost confidence in the security of their possession, many farms having been for a long series of years in the same family. Several of the large landlords are ready to give leases, but the tenants do not desire them; they know that at each renewal of a lease their farms would be re-valued, and the rent increased,—a course which is very seldom taken with yearly tenants. * *

Yet the great proportion of English farms is held on yearly tenure, which may be terminated at any time by a six months' notice on either side. It is a system preferred by the landlord, as enabling him to retain a greater control over the land, and acquiesced in by the tenants, in consideration of easy rent.

Here we note that, in England, a yearly tenant has the advantage of a low rent, but without motive to improve or security for improvements; in Bengal, a yearly tenant is subject to a rack-rent which leaves him without means to improve if he were so inclined. Yet Sir Barnes Peacock measured English and Bengalee tenancies by the same rule.

IV.—ENCUMBERED ESTATES.

But there is one great barrier to improvement, which the present state of agriculture must force on the attention of the Legislature, the great extent to which landed property is encumbered. In every country where we found an estate more than usually neglected, the reason assigned was the inability of the proprietor to make improvements, on account of his incumbrances. We have not data by which to estimate with accuracy the proportion of land in each country in this position, but our information satisfies us that it is much greater than is generally supposed. Even where estates are not hopelessly embarrassed, landlords are often pinched by debt which they could clear off if they were enabled to sell a portion, or if that portion could be sold without the difficulties and expense which must now be submitted to.

V.—THE LABOURER.

(a). The disparity of wages paid for the same nominal amount of work in the various counties of England is so great as to show that there must be something in the present state of the law affecting the labourer, which prevents the wages of agricultural labour finding a more natural level throughout the country. Taking the highest rate we have met with, 15s. a week in parts of Lancashire, and comparing it with the lowest, 6s. a week in South Wilts, and considering the facilities of communication in the present day, it is surprising that so great a difference should continue. * *

(b). The higher wages of the northern counties is altogether due to the proximity of manufacturing and mining enterprise. The difference between the rates in the corn countries of the east and the mixed husbandry of the midland and western counties, is not so uniform as to warrant any deduction such as showed itself so distinctly in the average rent of those districts.

(c). The influence of manufacturing enterprise is thus seen to add 37 per cent. to the wages of the agricultural labourers of the northern counties, as compared with those of the south. The line is distinctly drawn at the point where coal ceases to be found, to the south of which there is only one of the counties we visited, in which the wages reach 10s. a week.

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(d). The local circumstances of that county explain the cause of labour being there better remunerated; the wealthy population of Brighton, and other places on the Sussex coast, affording an increased market for labour beyond the demands of agriculture. A comparison with the price of labour in the same counties in 1770 shows this influence clearly; the great increase of wages (66 to 100 per cent.) is in the northern counties, whilst the increase in the eighteen southern counties mentioned by Young is under 14 per cent.

* * Nothing could show more unequivocally the advantage of manufacturing enterprise to the property and advancement of the farm labourer.

* * In the manufacturing districts, agricultural rents and wages have kept pace with each other, while in the purely agricultural counties, the landlord's rents have increased 100 per cent., and the labourer's wages not quite 14. In the northern counties the labourers are enabled to feed and clothe themselves with respectability and comfort, while in some of the southern counties their wages are insufficient for their healthy sustenance.

13. MR. JAMES CAIRD (*The Landed Interest, 1878*).

I. (a). The distribution of landed property in England, so far as ownership is concerned, is, by the growing wealth of the country, constantly tending to a reduction in the number of small estates. This tendency is further promoted by the law which permits entails and settlements, thus hindering the natural sale of land so dealt with; and also by rights of primogeniture, which prevent sub-division of landed property among the family in case of intestacy. Cultivation thus passes out of the hands of small owners into those of tenant-farmers, causing a gradual decrease of the agricultural population, and a proportionate increase of the towns.

(b). This has been much accelerated by a policy of free trade, which has at once opened up the markets of the world for our commerce, and for the produce of our mines and manufactures. These are advantageously interchanged for the corn and other agricultural products of foreign lands. This will go on while the commerce is found mutually profitable. And it will be profitable so long as, by superior skill and enterprise, combined with exceptional mineral advantages, we can undersell other countries in the produce of our manufactories and mines, while they can supply us with corn at a cheaper rate than we can grow it at home. * *

(c). More than one-half of our corn is now of foreign growth, and nearly one-fourth of our meat and dairy produce; whilst year by year our corn-land is giving place to the more profitable produce afforded by the milk and grazing and market-garden farms which are gradually

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extending their circle. Such produce renders the land more valuable; more tempting prices are offered for it to the small land-owners, and their numbers decrease. Wealthy men from the mines and manufactories and shipping and colonial interests, and the learned professions, desire to become proprietors of land; and some competition exists between them and those land-owners whose increasing wealth tempts them on suitable opportunities to enlarge the boundaries of their domains. Thus small proprietors are bought out, and agricultural land-owners diminish in number; while, side by side with them, vast urban populations are growing up, having little other connection with the land than that of affording the best market for its produce. * *

The buying up of small farms by men of capital enfeebled Rome and hastened her fall.

II. The population of England increases more rapidly than that of France, because our enormous foreign trade, amounting in value to £20 per head of our population, not wedded to the soil by property, emigrate to countries of the same language, at the rate of 100,000 a year, partly to the United States, and partly to our own colonies.

Our agriculture is no longer influenced by consideration of the means of finding employment for surplus labour, but is now being developed on the principle of obtaining the largest produce at the least cost, the same principle by which the power-loom has supplanted the hand-loom. In this process many ancient ties are loosened, and among them that adhesiveness to the soil which for generations has more bound the English labourer than the owner of the land to the parish of his birth,—the man of most ancient known descent being in many cases the labourer. The process is a wholesome one so long as the command to multiply and replenish the earth has not been fulfilled. And the general rise of wages among the labouring classes, both in town and country, with the diminution of pauperism, in the last five years, would seem to be a satisfactory proof that there is still room in this country, and no need to check the growth of population.

14. I. Mr. Caird's delight at the increasing income of land-owners makes him indifferent about the emigration from England of the more energetic and the ablest of her agricultural population.

(a). It has been well ascertained that during the last thirty years the agricultural population has diminished. The circumstances which have led to that continue in full strength. Increased facilities of locomotion between different parts of the country, and for emigration across the seas, tend more and more to carry off the energetic portion of the agricultural population.

(b). This has raised the rate of farm wages and the cost of cultivating arable land. The prosperity of the wage-earning class in other occupations has, at the same time, vastly increased the demand for butcher's meat and dairy produce, and so greatly increased the returns from grass land. The natural result is a gradual conversion of suitable arable land to grass, and this diminution of extent is accompanied also by the introduction of labour-saving machines.

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(c). There is thus in both ways a tendency to diminution of our agricultural population,—the one operating in carrying off the ablest to more remunerative fields of industry, the other in lessening the home demand for agricultural labour.

(d). There has been, within the last twenty years, a very considerable increase in the value of land in this country. The improvement does not seem to have begun in England till 1858, the gross annual value of "Lands" in 1857 having been returned at £50,000 less in that year than in 1846. From 1858 the rise has been progressive and continuous, and with an average increase of £470,000 a year.

	England. £	Scotland. £	Ireland. £	TOTAL. £
Increase of gross annual value of land assessed for income tax, in 1875 compared with 1857 ...	8,948,000	1,561,000	546,000	11,055,000
Increase per cent. ...	21	26	6	
Capital value of increase at 30 years' purchase...	268,440,000	46,830,000	16,380,000	331,650,000

(e). This increase, as elsewhere explained, has arisen chiefly from the great advance in the consumption and value of meat and dairy produce.

(f). But though in the aggregate the land-owners of England have become richer by more than one-fifth, and those of Scotland by more than one-fourth, the progress has not been uniform. In the purely corn districts, and on the chalk and sands of the drier counties where grass does not thrive, the increase has been small. On the poor clays there has been none. It has been greatest in the grazing counties, and in the west and north.

II. The land-owner, notwithstanding his so greatly increased riches, has nothing to spare for an increased number of those labourers whose toil contributes to his wealth. The reward reserved for the labourers is to leave a country that is farther advanced than Continental Europe in that science of political economy which concerns itself with the distribution of wealth.

(g). In short, our system is that of large capitalists owning the land; of smaller capitalists, each cultivating five times more of it than they would have means to do if they owned their farms, and of labourers free to carry their labour to any market which they consider most remunerative. It has been the gradual growth of experience in a country of moderate extent, where land is all occupied, where capital is abundant and constantly seeking investment in land, and where other industries than agriculture are always demanding recruits from the children of the agricultural labourer, who find besides a ready outlet in those British colonies where the soil and climate are not much different from that which they leave, and where their own language is spoken. * * In the United States and in the vast Continent of Australia there is room enough to take, with advantage, the surplus population of every country in Europe for many generations. Instead of struggling at home as labourers, or cultivators

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of small patches of land, where nothing but the most sparing frugality enables them to live, the working men of all countries are invited and assisted by Australia to take a share on equal terms with our own people in the great enterprise of colonising a new Continent. * * A system is best tested by its fruits.

And that system which multiplies manifold the enormous wealth of land-owners, but which, yet,—with plenty of land untilled, and with England's national independence, made precarious by her growing dependence on foreign corn—has no kinder nor more cheering word for the agricultural labourer than that he should emigrate to Australia, is no doubt the best system.

(b). This country is becoming every ten years less and less of a farm, and more and more of a meadow, a garden, and a play-ground. The deer forest, and grouse, in the higher and wilder parts of the country, and the picturesque commons in the more populous districts, are already in many cases not only more attractive, but more remunerative in health and enjoyment than they probably would be if subjected to costly improvement by drainage, or by being broken up for cultivation. The poor clay soils which are expensive to cultivate, and meagre in yield, will be gradually all laid to grass, and the poorer soils of every kind, upon which the costs of cultivation bear a high proportion to the produce, will probably follow the same rule. During the last ten years the permanent pasture in Great Britain has, chiefly from this cause, been increased by more than one million acres.

Forgetful of history, unconscious that his account of the existing division of land in England reads like a plagiarism of an account of the aggregation of farms which destroyed the Roman Empire (Appendix XXX, para. 1, III), Mr. Caird looks very complacently on the conversion of arable land into pasturage, wherever the soil is not good enough for his craze of large farms and high farming. A greater authority, Arthur Young, wrote of poor soils and peasant-proprietors: "Give a man the secure possession of a bleak rock, and he will turn it into a garden; give him a nine years' lease of a garden, and he will convert it into a desert." But it is better that the country should become more and more of a meadow and a play-ground, than that the play-ground should be disfigured by the small farms of peasant-proprietors who could defend England from foreign foes in a way in which the rich land-owners cannot.

(c). It is worthy of note that the strictly rural parishes of England exhibit some decline of population. In one-fourth of the registration districts there has been a diminution of the agricultural population in the ten years ending 1871, amounting altogether to 108,000. And it is

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quite certain that this continues. It arises from the natural draft to the better-paid labour of the mining, manufacturing, and other industrial countries, which are augmented both by this immigration and by natural increase. Diminished population in the rural districts is followed by a rise of wages, and this leads to greater economy of labour, both by the introduction of labour-saving machinery and the conversion of arable land to pasture, where the nature of the soil admits. The higher price of meat and dairy produce also contributes to this change. But the loss in numbers of the agricultural districts is amply made good by the gain in the rest of the country, the population now employed in agriculture being small compared with that of the other industries. Fifty years ago a fifth of the working population of England was engaged in agriculture. At the present time there is less than a tenth.

While the proportion of the agricultural population, or the strength and vigour of the nation, has diminished by one-half, nations on the Continent of Europe which bear England no good will have armed their sturdy peasant-proprietors by the million.

(d). On the other hand, the population is multiplying at the rate of 350,000 a year—nearly a thousand a day. Their consumption of food improves, not only in proportion to their increase in numbers, but also with the augmenting scale of wages. Twenty-five years ago the agricultural population rarely could afford to eat butcher's meat more than once a week. Some of them now have it every day; and as the condition of the rest of the people has improved in an equal degree, the increased consumption of food in this country has been prodigious. In addition to the whole of our home produce, we imported, in 1877, foreign food and corn of the value of one hundred millions sterling, two-thirds of which was in corn, and one-third live and dead meat. It has become a vast trade, embracing not only the nearer ports of Europe, but those of India, Australia, and America, which in corn has increased threefold, and in meat and provisions sixfold. If this goes on at the same progressive rate for the next twenty years, we shall have forty millions of people to feed, which will tax still more the resources of all those countries which have hitherto sent us their surplus, and can hardly fail to be attended by a considerable increase of the price of provisions.

It is assumed here that manufactures will flourish, though capital and machinery be sent abroad to countries which have raised a barrier of protective duties against England, and though the home market for manufactures will be contracted by the decrease of the agricultural population. Should, however, manufactures decline, the producers of meat will, like the producers of wheat, be advised by Mr. Caird to quit the country, leaving it to be defended by the fractional men congregated in cities (para. 11, section IV); and the people in other countries, whose food will be made dearer by the supplies to the fractional men in England, will not

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(e). In regard to the future of the third branch of the landed interests, the agricultural labourer, his prospects will now harmonize with the general prosperity of the country, and the standard of wages. There is no impediment in his way to move to a better field of employment in this country or abroad. Great encouragement is offered and cheap transit to agricultural labourers by several of the colonies.

The prosperity of the labourer is such that his brightest look-out in England is to leave the country.

15. TITHES.

Originally all the land in the country was titheable, except such as belonged to the crown and to the church itself. At the time of the Reformation, much of the church lands in this country passed into the hands of laymen, and continued exempt from tithe, and from various other causes a considerable proportion of the lands of the country has become exempted. As the country became more populous, and its demands upon the produce of the soil more difficult to meet, the payment of tithes in kind was found a great hindrance to improved agriculture, as men were naturally unwilling to expend capital for the purpose of increasing the produce, while others who ran no risk and bore no part of the toil, had a right to share in that increase. Forty years ago it was determined that this should cease, and it was enacted that, instead of payment in kind, tithes should be commuted into a payment in money, calculated on the average receipts of the preceding seven years, the annual money value to vary according to the annual price of corn on a septennial average, but the quantity of corn then ascertained to remain for ever as the tithes of the parish.

A very important change of principle here took place. Up to that time the income of the church increased with the increased value yielded by the land, the original object that the church should progress in material resources in equal proportion with the land being thus maintained. From 1836 that increment was stopped. Since that time the land rental of England has risen 50 per cent., and all that portion of the increase which previous to 1836 would have gone to the church has gone to the land-owners.

A tenth of that would not, however, by any means adequately represent the loss to the church and the gain to the land-owners, for the tithe in kind was the tenth of the gross produce, which was equal to much more than a tenth of the rent of arable land. In 1836 the money value of the tithe, as compared with the land rental, was as four millions sterling to thirty-three. In 1876 the tithe was still four millions, but the land rental had risen to fifty. If the old principle of participation had continued, the annual income of the church would now have been two millions greater than it is.

16. STATE LOANS.

A very large proportion of the land is held by tenants for life under strict settlement, a condition which prevents the power of sale, and it is also frequently burdened with payments to other members of the family, and in many cases with debt. The nominal income is thus often very much reduced, and the apparent owner of five thousand a year may have little more than half of it to spend. In such cases there is no capital available for the improvements which a land-owner is called upon to make, in order to keep his property abreast of the advance in agricultural practice. This was pressingly felt at the time of the repeal of the Corn Laws, and the withdrawal of protective duties from native produce. Parliament, therefore, when it enacted a free import of the necessaries of life, provided State loans on favourable terms to the land-owners for the drainage and reclamation of their estates. * *

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PARA. 17.

The State loans were limited in Great Britain to drainage and reclamation, the land-owners being left to their own resources for buildings, roads, and fences. In Ireland these were and still are included, that country having always been favoured in matters of State assistance. The rate of payment was by annual instalments of $6\frac{1}{2}$ per cent., which in twenty-two years redeemed the principal, and at the same time paid the annual interest at $3\frac{1}{2}$ per cent.

The class of land-owners in the United Kingdom comprises a body of about 180,000, who possess among them the whole of the agricultural land from 10 acres upwards. The owners of less than 10 acres each hold not more than one-hundredth part of the land, and may here be regarded as householders only. The property of the land-owners, independent of minerals, yields an annual rent of 67 millions sterling, and is worth a capital value of 2,000 millions.

The tenant-farmers occupy farms of very various extent; 70 per cent. of them under 50 acres each, 12 per cent. between 50 and 100 acres, and 18 per cent. farms of more than 100 acres each, 5,000 occupy farms of between 500 and 1,000 acres, and 600 occupy farms exceeding 1,000 acres. Many of them are men of liberal education, and some of these are found in most parishes and in every county.

17. COPYHOLD.

A term in English law applied to lands held by what is called 'tenure by copy of court roll,' the nature of which is thus described by Littleton: "tenant by copy of court roll is as if a man be seized in a manor, within which manor there is a custom which hath been used time out of mind of man, that certain tenants within the same manor have used to have lands and tenements to hold to them and their heirs in fee-simple or fee-tail, or for term of life, at the will of the lord, according to the custom of the same manor. And such a tenant may not alien his land by deed, for then the lord may enter as into a thing forfeited unto him. But if he will alien his land to another, it behoveth him after the custom to surrender the tenements in court into the hands of the lord to the use of him that shall have the estate. And these tenants are called tenants by copy of court roll, because they have no other evidence concerning

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their tenements, but only the copies of court rolls." From this it appears that the title to copyhold lands is not only modified, but altogether constituted by custom; subject to the estates in them, which the custom confers, they are held by the lord under the common law as part of the demesnes of his manor. For these customary estates were in their origin mere tenancies-at-will, though by long usage they have in many instances acquired the character of a permanent inheritance, descendible (except where otherwise modified by custom) according to the rules of the common law, and as tenancies-at-will they continue to be considered in all questions relating to the *legal* as distinguished from the customary property in the land.

18. POOR LAWS.

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(a). The Poor Laws are on the principle that impotent poor, or those who have no means of support and are physically incapable of supporting themselves, are entitled to support from a compulsory poor-rate; and that to able-bodied persons, or to their families, relief is to be given only within the walls of the workhouse. The assessment for the poor-rate is laid in respect of the revenue or annual profit of the property rated, whether real or personal. Such property, therefore, as is incapable of yielding profit, is not rateable.

(b). One of the abuses in the administration of the law is thus described—

The most mischievous practice was that which was established by the justices for the County of Berks, in the month of May 1875, when, in order to meet the wants of the labouring population caused by the high price of provisions, an allowance in proportion to the number of his family was made out of the parish fund to every labourer who applied for relief. This allowance fluctuated with the price of the gallon loaf of second flour, and the scale was so adjusted as to return to each family the sum which a given number of loaves would cost beyond the price in a year of ordinary abundance. * * Under this allowance system the labourer received a part of his means of subsistence in the form of a parish gift; and as the fund out of which it was provided was raised from the contributions of those who did not employ labourers, as well as of those who did, their employers, being able to burthen others with the payment for their labour, had a direct interest in perpetuating the system. Those who employed the labourers looked upon the parish contribution as part of the fund out of which they were to be paid, and accordingly they lowered their rate of wages. The labourers also looked on the parish fund as a source of wages independent of their labour wages. The consequence was that the labourer looked to the parish aid as a matter of right, without any regard to his real wants, and he received the wages of his labour as only one and a secondary source of the means of subsistence. His character as a labourer became of less value, and his value as a labourer was thus diminished under the combined operation of these two causes.

The Poor Law Amendment Act, 4 and 5 William IV, c. 76, put an end to this abuse.

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19. An evil result of the Poor Laws was thus described by Professor Senior (*Historical and Philosophical Essays*, Volume II).

POOR LAWS.
Para. 20.

As the burden of poor rates was more and more felt by landlords, all sorts of devices were resorted to, in order to shift settlements from one parish to another; where a parish belonged to a single owner, or to a few owners acting in concert, the cottages were pulled down, and the inhabitants bribed to sleep in adjoining parishes, under conditions transferring their settlement. We have visited parishes (written in 1841) where there was not a house except the squire's mansion and the parsonage, and the whole labour was performed by persons legally resident in the neighbouring villages. Where the number of proprietors or the interests of cottage-owners rendered this impossible, the object was effected, on a limited scale, by bribing girls to marry men belonging to other parishes, and by apprenticing boys to masters resident elsewhere. And the result was a distribution of the population, without reference either to their welfare or their utility. In a pauperised district, even if the labourers had been industrious, they would have been inefficient because they were ill-distributed; even if they had been well-distributed they would have been inefficient, because they had no motive to be industrious.

20. England's proudest recollections of the liberties she won at home, and of the foreign policy which made her respected abroad, relate to a time when the land was occupied by peasant-proprietors. She has fallen now on the evil days of large estates, a diminishing breadth of tillage, and a decreasing and deteriorating rural population. The prosperity of the large estates depends on conditions which are wanting in Bengal, namely, flourishing manufactures, numerous towns, and poor laws: the preservation of those estates from the shock of a revolution is contingent on the emigration to other countries of a mass of floating population which, dis-severed from the land, would else be a grave political danger. Emigration beyond sea will scarcely be recommended (if it were possible on a large scale) for a people in Bengal who are best when they are most under home influences.

APPENDIX XXIX.

IRELAND.

APP.
XXIX.
Para. 1.

1. IRELAND UNDER HENRY VIII.—*Green's Short History of the English people.*

But submission was far from being all that Henry desired. His aim was to civilise the people whom he had conquered; to rule, not by force, but by law. But the only conception of law which the king or his ministers could frame was that of English law. The customary law which prevailed without the Pale,¹ the native system of clan government and tenure of land by the tribe, as well as the poetry and literature which threw their lustre over the Irish tongue, were either unknown to the English statesmen or despised by them as barbarous. * * The chiefs were to be persuaded of the advantage of justice and legal rule. Their fear of any purpose to "expel them from their lands and dominions lawfully possessed" was to be dispelled by a promise "to conceive them as their own." * * Chieftain after chieftain was won over to the acceptance of the indenture which guaranteed him the possession of his lands, and left his authority over his tribesmen untouched on conditions of a pledge of loyalty, of abstinence from illegal wars and exactions on his fellow-subjects, and of rendering a fixed tribute and service in war time of the crown. * * The chieftain in fact profited greatly by the change. Not only were the lands of the suppressed abbeys granted to them on their assumption of their new titles, but the English law courts, ignoring the custom by which the land belonged to the tribe at large, regarded the chiefs as sole proprietors of the soil.

Lord Cornwallis made a mistake similar to that of the Irish Courts when he recognised the zemindars as proprietors of the soil.

2. IRISH LANDLORDS AND BENGAL ZEMINDARS (SIR G. CAMPBELL).

I. (a). It is hardly possible to approach the subject without first realising this, *viz.*, that in Ireland a landlord is not a landlord, and a tenant is not a tenant in the English sense. In fact this may be said of most countries. The whole difficulty arises from our applying English ideas and English laws to a country where they are opposed to facts, and to those "*αγραπτοι νομοι*" which are written in the hearts, and find expression in the customs of the people. * *

(b). Talk of the sacredness of landlord property as you will, it is quite impossible for any one to hear the common language of, and read the literature regarding, Ireland, without feeling that, law or no law, at this

¹ The districts of Drogheda, Dublin, Wexford, Waterford, and Cork, formed what was known as the English Pale.

moment (1869), the landlords are not the only owners of the soil. All classes talk freely, as a matter of course, of a man as 'owning a farm' 'having inherited a farm.' It is well known that the tenants habitually dispose of their farms by formal will, charge them with fortunes for daughters, and in every respect deal with them as property. Take the book of Mr. Trench, who, however friendly he may be to the people, is certainly not inclined to assist their rights of property against those of the landlords; we find him constantly, and as it were unconsciously, applying the language of property to the tenure of farms; it is, over and over again—a man owned a farm—did this with his farm—did that with his farm. * * Surely it is a mere superstition to talk as if it would be a sacrilege to acknowledge some sort of claim to a property which is already so fixed in the hearts and language of the people of Ireland, low and high. * *

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CAMPBELL.
—
Para. 2, contd.

(c). There can be no question that, as a rule, in Ireland it is the tenant, and not the landlord, who has reclaimed the land, built the homestead, put up the fences, and done most of what has been done. He has done this without special contract, in reliance on the custom. The exercise of the extreme legal right of the landlord to turn him out, without full compensation, is a confiscation in the reasonable sense of the word. Yet every attempt to interfere with this right of the landlord to ignore improvements already made has been met by the cry of confiscation on their side.

(d). The claim of the Irish is not to oust the landlords, but to hold under them at a fair rent. People would rather say, "admitting your title to what you have enjoyed, *viz.*, the rent, we claim that which we have enjoyed, *viz.*, the occupation of the land, paying the rent." It seems absurd to English ears that a man who has come in under a definite contract of a mercantile character as a tenant in the English sense, should claim any right to hold beyond the terms of his contract. But in these things we must particularly bear in mind what Mr. Maine has shown in his 'Ancient Law,' that in certain stages of society things depend rather on 'status' than on contract; that contract is a later system which is fully carried out only in very advanced societies. Especially as regards the tenure of land, it may be said that in very few countries has contract wholly prevailed over status. Indeed, Great Britain is almost the only country in the world in which land contract has been carried to the length of our three-fold division of classes into superior capitalist owning the land and supplying the fixed machinery necessary for its cultivation; inferior capitalist cultivating under a definite contract, and labourer working for hire. The system is different in Ireland; but so far from Ireland being in this respect a strange and abnormal country, the fact is that as the world now stands, it is we who are abnormal, and the Irish system is that which is more general; we may, therefore, well judge it tolerantly if not respectfully.

(e). When we go back to old accounts, the similarity of Irish tenures and Irish history to Indian tenures and history, is very remarkable. The surrenders of the Irish tenures of the rebel chiefs, and the re-grants upon English titles which took place in Ireland, are exactly analogous to what has since taken place in Oudh. A little later we have in Sir John Davies' paper an account of the only regular and thorough settlement of Ireland

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Para. 2, contd.

which has been made, under that insufficiently appreciated monarch, James I. * * Davies found exactly the same land question which in India so much puzzled Lord Cornwallis and others accustomed to English ideas. He fully explains how the chiefs and tanists—zemindars, and talookdars, we might say—though treated in the English grants, as proprietors, were not really so in the full English sense of the word; how the devolution of these tenures did not follow any ordinary rules of inheritance, but went from the strongest to the strongest of the ruling family; and how, contrary to the ordinary law of the country, they were not divided, but went to a single person (as did the greatest zemindary and talookdary tenures in Bengal and Oudh), being treated rather as semi-hereditary offices, than under the laws applicable to property.

(f). There can be no doubt that the village system formerly prevailed in Ireland. The whole system of settlement and valuation is based on it to the present day, the town lands being exactly preserved, though the villages have dissolved into separate farms. Davies, in some passages, speaks as if there was then a still subsisting system of constant repartition of the lands among the villagers, and this is no doubt the system of which there are abundant traces in India and elsewhere, but I suspect that in Ireland, as in India, it had gradually become rare or had fallen into disuse; for Davies, in other passages, very fully and particularly explains how the village lands descended by inheritance under what he likens to the custom of gavel-kind, that is, the law of equal partition among the sons, common to Ireland, India, and most Aryan countries where the feudal system has not prevailed over it. * * *

II. On considering the whole subject of Irish land tenure, Sir John Davies came to the very sensible conclusion that English ideas do not altogether apply; that neither the superior nor the inferior holder can be considered to be the free-holder; but that each has rights according to his degree. The question of fixity of tenure was in fact decided in favour of the tenant. Provision was made for commuting the uncertain cuttings and cosherings into certain payments, consolidating them with the rent, and prohibiting the landlords from taking, under any pretext, more than the rent thus adjusted; all in terms almost identical with those of Lord Cornwallis' Indian Regulations, for it is a great mistake to suppose that the Cornwallis Regulations made the zemindars complete and absolute owners. On the contrary they were strictly bound not to demand more from the ryots than 'the established rates,' and not to eject them so long as they paid those rates. Sir John Davies did, however, what Lord Cornwallis did not do, that is, the holdings and liabilities of the under-tenants were recorded, and their rights were secured, not only in theory, but by effective record of rights. Under this settlement it is said that Ireland for a generation enjoyed peace and prosperity such as she had never had before, and perhaps has not seen since.

3. The system of village communities prevailed in Ireland as in India; the natural transition from that state should have been to separate peasant proprietorships, but this stage of progress, which every other country has reached, was

missed by Ireland and Bengal, while England has receded from it. In 1866, Professor Cairnes wrote as follows:—

I. (a). In his admirable "Plea for Peasant Proprietors," Mr. Thornton observes that "Ireland is one of the few countries in which there neither are, nor ever were, peasant properties." The remark well deserves consideration,* and, followed up, will be found to throw light on some characteristic features of Irish industrial life.

(b). In one of the most profound of modern works on the philosophy of jurisprudence (Maine's *Ancient Law*), it has been shown that the primitive condition of property is that of joint ownership—"that property once belonged, not to individuals or even to isolated families, but to larger societies, composed on the patriarchal model;" and that private property, as we now know it, has only attained its actual form by a process of 'gradual disentanglement of the separate rights of individuals from the blended rights of a community.' This discovery, if taken in connection with the known historical facts of the conquest of Ireland, will be found to throw some light upon the problem with which we are now concerned.

[Professor Cairnes then showed that down to the reign of Elizabeth, the landed system in Ireland was that of village communities, under chieftains who "had no longer estate than for life in their chiefries, the inheritance whereof did rest in no man," precisely as was the case with zemindars before the permanent settlement. This system was known as the Irish custom of Tanistry, or the Brehon tenures.]

II. Nevertheless, extraordinary and apparently impracticable as were these Brehon tenures, judged by the standard of modern English notions, they in fact bear a strong analogy to—indeed, I might say, are in character identical with—various modes of possession which have at different times existed amongst other nations during the corresponding stage of their growth, and of which some examples are still extant; a fact from which we may infer that they were on the whole not unsuitable to the social and industrial requisites of those who lived under them. And from the same fact we are justified, I think, in assuming that had the Irish people been allowed to follow the course of their natural development, what has happened in other countries would have happened in Ireland also. It is reasonable to think that the progress of population, and enlarged intercourse with more advanced nations, would there, too, in the absence of disturbing causes, have produced their natural effects in quickening the sentiment of property; that the exactions of the chiefs would have become more and more strictly limited; that the occasions for redistributions would have been made less and less frequent; that the common sept property would by degrees have passed more or less completely into individual possession; in a word, that the Brehon tenures would have ripened into a peasant proprietorship. But just at this time a large portion of the soil of Ireland passed into the hands of English owners, and within half a century, the remainder

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Para. 3, contd.

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Para. 3, contd.

for the most part followed the same destination. These owners took the place of the native chiefs, but with proprietary pretensions of a far different kind. The loose prerogatives of the Tanists were suddenly, by the fiat of an English judge, transmuted into the definite ownership of English law; and on the other hand, the claims of the members of the clan, adjudged by the English courts to be no estate, "but a transitory and scrambling possession," were absolutely repudiated. The natural development of property in the soil was in this manner violently arrested in Ireland, which has accordingly never known peasant proprietorship. It has, however, in lieu thereof, furnished the world with a type of tenure peculiarly its own. 'Cottierism' is, we believe, a specific and almost unique product of Irish industrial life.

The Irish cottier cannot be compared with the peasant-proprietor.

III. One of the most curious and unfortunate blunders which have been made about the Irish cottier, is that which confounds him with the peasant-proprietor under the general description of a representative of *petite culture*. In fact the two forms of tenure are, in that which constitutes their most important attribute, the nature of the cultivator's interest in the soil which he tills, diametrically opposed; and the practical results stand as strongly in contrast as the conditions. It would be difficult, perhaps, to conceive two modes of existence more utterly opposed than the thriftless, squalid, and half-starved life of the peasant of Munster and Connaught, and that of the frugal, thriving, and energetic races that have, over a great portion of continental Europe—in Norway, in Belgium, in Switzerland, in Lombardy, and under the most various external conditions, turned swamps and deserts into gardens.

No analogy between the cottier and the English tenant farmer.

IV. And it is scarcely a less gross error to apply to the same status, after the fashion so common with political reasoners in this country, conclusions deduced from the relations of landlord and tenant in England and Scotland. True; the cottier and the cultivator of Great Britain are alike tenant-farmers; they both pay rent, which is, moreover, in each case determined by the competition of the market. But under what circumstances does competition take place in the two countries? In Great Britain the competitors are independent capitalists, bidding for land as one among the many modes of profitable investment which the complex industrial civilisation of the country supplies: in Ireland they are men—we speak, it will be remembered, of the cottier class—for the most part on the verge of absolute pauperism, who see in a few acres of land their sole escape, we cannot now say from starvation, but at best from emigration and the workhouse. Is it strange that the result should be different in the two cases? and that 'rent' which in England and Scotland represents exceptional profit (the appropriation of which by the landlord merely equalizes agriculture with other occupations), should in Ireland be the utmost penny that can be wrung from the poverty-stricken cultivator.

A broad distinction between the métayer and the cottier.

V. How, again, does the analogy of the tenant-farmer of continental countries meet the present case? Between the "métayer" and the cottier there is the broad distinction that, while the rent of the former is a fixed proportion of the produce determined by custom, that of the cottier is whatever competition may make it, the competition, we repeat

of impoverished men, bidding under the pressure of prospective exile or beggary.

VI. Lastly, we must insist on keeping the cottier distinct from another class also, with whom he has been more pardonably confounded, and with whom, indeed, he has many real affinities,—the serf of Eastern Europe and of mediæval times. Judging from their ordinary existence, there is, perhaps, little to distinguish the cottier from the serf. Nevertheless, they are not the same. The serf is *adscriptus glebæ*; the Irish cottier, as he knows by painful experience, is bound to the soil by no tie save those imposed by his own necessities. He has unbounded freedom to relinquish, when he pleases, his farm and home, and to transfer himself to the other side of the Atlantic, and he pays for the privilege (of which, no doubt, he has largely availed himself), in the liability, to which the serf is a stranger, of being expelled from his farm and home when it suits the views of his landlord. Such is the Irish cottier, the essential incidents of whose position are well summed up in the definition of Mr. Mill—"a labourer who makes his contract for the land without the intervention of a capitalist farmer," and "the conditions of whose contract, especially the rent, are determined not by custom but by competition."

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VII. It has been seen that the confiscations of Irish property in the seventeenth century precluded the realisation, in conformity with the analogy of industrial progress in other countries of a peasant-proprietor *régime*. It is obvious that those circumstances were equally unfavourable to the rise of a tenant-farmer class on the modern English pattern, who might, by a steady demand for the services of the natives, have raised them at all events to the level of the Dorsetshire agricultural labourer; for disposable capital is the basis of such a class, and disposable capital did not exist in Ireland. From the advantages of the *métayer* tenure of the Continent, again, the Irish were excluded by moral, but not less potent causes. *Métairie* belongs eminently to that class of institutions which are not made, but grow. Resting upon custom, it pre-supposes common traditions and mutual confidence and regard—conditions which, it is superfluous to say, were not to be found in Irish industrial society. There remained serfdom, which was in effect, though not in name, the state of life into which, in the period immediately following the great confiscations, the mass of the Irish people fell. But as we have said, serfdom, though closely allied to, is not precisely cottierism. To realise the latter, it is necessary to apply to the former the maxims of competition and contract; and this was what in the course of the eighteenth century happened in Ireland. Modes of action which are only suitable, which are only tolerable, in an advanced industrial civilization, where the actors stand on independent grounds and exercise a real choice, and where, moreover, an effective public opinion exists to control extravagant pretensions, were suddenly introduced and rigorously applied amongst a people just emerging from the nomad state. In the lowest deep there was thus found a lower deep; and Irish serfdom merged in the more desperate *status* of the Irish cottier.

4. PROFESSOR SENIOR.

I. Where there is little capital, and there are few small proprietors, society is divided into the very rich and the very poor, with

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SENIOR.Para. 4. contd.
Large estates
and a cottier
tenantry.

scarcely any intermediate class. The land is cut into small holdings, because it is only in small holdings that a tenant without capital can cultivate it. And this very sub-division renders the landlord often unable, and almost unwilling, to employ on it capital of his own. The productiveness of his estate might be doubled by an extensive drainage, but the consent, perhaps the co-operation, of the tenants is necessary, and a poor, ignorant, and suspicious population believe either that what is beneficial to their landlord must be mischievous to themselves, or, at least, that if their consent is to be asked, it must be paid for. * * The land which a family with little capital can cultivate does not, except during a small part of the year, afford profitable employment for their whole time. If it were their own, indeed, they might, and probably would, keep constantly at work on it, and so gradually improve it; but they have no motive to treat thus another man's land. As the supply of labour, except during the short busy seasons, is great, and the demand almost nothing—in other words, as almost everybody is willing to be hired, and scarcely anybody willing or able to hire—the wages of labour are very low, and employment at any wages at all is scarce and precarious. The whole rural population therefore—and where there is little capital this is nearly the whole population—is thrown for support on the occupation of land.

It is absurd to complain of excessive rents where the whole population competes for land.

II. It is absurd to complain that under such circumstances rents are excessive,—that everything beyond a miserable subsistence is extorted from the tenant. The price of the use of land, like the price of every other commodity of limited supply, is fixed, not by the seller, but by the purchaser. In England and Scotland the competition of the bidders for farms is limited by the amount of capital and skill required, and is further limited by the general rate of profit. No one will knowingly offer a rent which does not allow him an average return for his capital. And as to the labourers, to them a bit of land is a luxury, like the possession of a small estate to a shop-keeper. If it comes in their way, they take it; but they will make no sacrifices to obtain it, and never look to it as a means of subsistence.

In such a country the alternatives are occupation of land, beggary, or famine.

III. But in a country in which every one who can find a landlord to accept him can be a farmer, and scarcely any one can be a labourer; where the three only alternatives are the occupation of land, beggary, or famine; where there is nothing to repress competition and everything to inflame it; the treaty between landlord and tenant is not a calm bargain, in which the tenant having offered what he thinks the land worth to him, cares little whether his offer is accepted. It is a struggle like the struggle to buy bread in a besieged town, or to buy water in an African caravan. It is a struggle in which the landlord is tempted by an extravagant rent; the agent by fees or by bribes; the person in possession by a premium to take him to another country; and rivals are scared away by threats, or punished by torture, mutilation, or murder. The successful competitor knows that he has engaged to pay a rent which will swallow the surplus beyond the poorest maintenance for his family that with his trifling stock he can force the land to produce. He knows that if he fails to pay he must expect ejection, and that ejection is beggary. He calculates how small a portion of his tenement, devoted to the most abundant variety of the most abundant species of food, will support his

family. He grows on that portion, in our climates, lumper potatoes, and cultivates on the remainder something better—not to consume, but to sell, in order to meet his rent. If, as is frequently the case, he has not been able to obtain land more than enough to supply his family with potatoes, he works out his rent by hiring himself to his landlord. * *

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Para. 5.

IV. In England and Scotland the great majority of the population are loyal, in the primitive sense of that abused word, that is, they are the friends of the law. They may wish portions of it to be altered; but so far are they from resisting it, that they unite to prevent it from being resisted by others. * * This is accounted for when we recollect that in England and Scotland the law interferes in favour of the poor far more frequently than in favour of the rich. Where the bulk of the population live on wages, the poor are the creditors, and the rich and the middle class are the debtors. * * In Ireland, on the contrary, the poor are the debtors, the rich the creditors. The 1,000,000 families who now occupy the soil of Leinster, Munster, and Connaught, scarcely know the existence of the civil law-courts, except as the sources of processes, distresses, and ejectments.

V. In England, the landlord is absolute master of the land, subject to the qualified and limited interest which he may choose to concede, or (to use the technical word) to *let* to his tenant: and he generally erects the necessary buildings, and makes the more expensive permanent improvements. * * 'The first English conquerors of Bengal,' says Mr. Mill, 'carried with them the phrase *landed proprietor*, or landlord, into a country where the rights of individuals over the soil were extremely different in degree, and even in nature, from those in England. Applying the term with all its English associations, in such a state of things, to one who had only a limited right, they gave an absolute right; from another, because he had not an absolute right, they took away all right; drove all classes of men to ruin and despair; filled the country with banditti; created a feeling that nothing was secure, and produced, with the best intentions, a disorganization of society which had not been produced in that country by the most ruthless of its barbarian invaders?' With equal impropriety we have transferred our English notions into Ireland. There are *there* also persons *called* landlords, farmers, and labourers, but they resemble their English types in little but name. In Ireland the landlord has been accustomed to erect no buildings, and make no improvements whatever. He is in general a mere receiver of rent; his only relation to his tenants is that of a creditor. They look to him for no help, and on the other hand, he can exercise over them little control. It is very seldom that he prescribes to them any system of husbandry, or, if he do so, that he can safely enforce it.

Confusion and destruction of rights of property in Ireland and in Bengal from misapplication of English ideas.

5. PROFESSOR J. E. CAIRNES.

(a). "Irish landlordism," as it has existed in the last and the earlier half of the present century, may be roughly resolved into three categories: firstly, the great landlords, with a few exceptions, Englishmen or of English descent, and Protestants, of whom the great majority

Irish landlordism.

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J. E. CAIRNES.Para. 4, contd.
Irish land-
lordism.As rents in-
creased, so did
middlemen in-
crease.

had derived their estates from the confiscations of the seventeenth century; secondly, the owners of smaller estates, by extraction also in great part English, or at all events British, and indebted for their properties mainly to the same political revolutions; and thirdly, the class of middlemen or profit-renters who, though themselves paying rent to landlords, were by religion, political sympathies, and habits, intimately connected, and, in their conduct and general views, practically identified with the proprietary class. Of these, the first class to a great extent became absentees, managing their estates either through agents, or, as was the more common case, through middlemen—those who form the third category in the above enumeration—to whom they let the land in large portions at low rents, and who sub-divided it and sub-let it to the occupying tenantry. The second and third classes, whose revenues were not sufficient to allow of residence in England or abroad, for the most part lived on the estates which they owned or supervised. * *

(b). Industrial society in Ireland had thus, by the middle of the last century or a little later, received its definitive form—that form in which it has existed down to a quite recent date. We have already seen how one constituent of the system, the cottier element, grew in dimensions towards its close, contemporaneously with the great extension of tillage-farming, which was the industrial feature of the time; and I have now to observe that the same cause was not less powerful in developing the territorial economy in other directions. As tillage was extended, rents rapidly rose. I believe I should be within the mark in stating that in this period, between 1760 and the close of the French wars in the beginning of the present century, the land revenues of Ireland were augmented in the proportion of four to one. Each step in this progress would of course furnish increased scope for the multiplication of new interests in the soil, and these took the form determined by the prevailing influences. Landlords who formerly resided on their estates could now afford to spend a greater or less portion of the year in some of the fashionable centres of the empire. Middlemen, under leases granted when prices were low and pasture the prevailing pursuit, found their incomes growing; and, their ideas rising with their fortunes, in many instances yielded, like their betters, to the attractions of city life. Absenteeism thus increased, and, with absenteeism, agencies and profit-renting. A second and a third race of middlemen thus intruded themselves between the head landlord and the occupying tenantry. The grades of the territorial hierarchy became constantly more numerous, the higher no less than the lower being identified with the system of agriculture which had now established itself in the country. The corn laws soon came to aid the more fundamental tendencies, and the commercial effects of the French wars added a new and powerful stimulus to the now complex influences which were impelling Ireland on her disastrous career. In that career she was arrested by the fearful summons of the famine of 1846. The shock, rude as it was, extensively deranging as it could not fail to be to the entire territorial system, might possibly not have been fatal, had not the famine been the occasion of free trade; but, as I have already shown, free trade effectually and for ever sealed its doom.

6. The account of middlemen is continued in the following extract from "Systems of Land Tenure in various countries," published by the Cobden Club.

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MR. LONGFIELD.

Para. 6.

I.—RIGHT HON'BLE M. LONGFIELD.

Middlemen.

(a). Thus sub-letting became very general, and there were large districts in which scarcely a single occupying tenant held directly from the owner of the fee.

(b). This system was useful to nobody but the middleman. He had a good income, with very little risk or trouble; and in the earlier part of this century, during the French revolutionary war; and the depreciation of the currency, caused by the suspension of cash payments by the Bank of England, rent of land rose so much that in many cases the middleman had as much profit from the land as the head landlord himself. Sometimes land rose so much in value that the tenant of the middleman was able to sublet his farm at a profit, and thus to become a middleman himself.

(c). The peasantry under this system were reduced to a wretched state. The traditions of liberality which belong to men who inherit large estates did not exist among men who took farms for the purpose of sub-letting them at the highest rent they could obtain. They were not expected to deal like gentlemen with their tenantry. They belonged nearly to the same class as the farmers, and made as hard a bargain in setting a farm as they would in selling a horse. They could scarcely afford to be liberal. If a gentleman, whose estate is let for fifteen hundred a year, makes a reduction of his rent at any time to the extent of 20 per cent., he loses one-fifth of his income; but if he was a middleman, paying a rent of twelve hundred a year, he could not make such a reduction without losing his entire income. The same principle extends to every case. Every act of liberality by the middleman would cost him a much larger proportion of his income. His trade was to extract as much as possible from the wretched occupiers of the land. The increase of population was so rapid, and the general poverty of the country was such, that men were found willing to engage to pay him anything that he demanded. The wages of labour were so low, and the difficulty of getting employment was so great, that it was better to get possession of land on any terms than to trust to casual employment for a subsistence.

(d). The middleman not having a permanent interest did not care for the improvement or deterioration of the estate. A thought upon the subject never crossed his mind.

(e). Two circumstances were of material assistance to the middlemen, and to those who acted like middlemen, in their treatment of the tenantry. First, there were no poor laws. They were therefore enabled to cover the land with a starving population, without the possibility of being called upon by law to cultivate anything to their support. Secondly, the law of distress was more severe than it is now, and enabled the landlord to distrain growing crops. * * Thus the landlord frequently thought it for his interest to encourage the sub-division of farms. I remember many years ago hearing an extensive land-agent laying down

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MR. LONGFIELD.

Para. 6, contd.

the principle in a very authoritative manner, that it was better for the landlord that there should be as many occupiers as possible on the land, since the more occupiers, the more tillage was necessary to support the tenants, and the landlord was able to help himself to the produce of the soil before they got anything.

(f). When the great fall of land took place after the year 1815, many middlemen were broken, and left the chief landlords to deal with the land itself, or with the immediate occupiers. Many landlords resolved to grant renewals of leases to none but the tenants in actual occupation. Acts of Parliament were passed to prevent or discourage sub-letting, and the system of middlemen gradually died away. They exist now chiefly where the land is held under bishops' leases, or under leases for lives remarkable for ever. * *

(g). The system of sub-letting, at once the cause and the effect of Irish poverty, has nearly disappeared (1870), and the middleman by profession no longer exists.

Competitive
rents.

II. Regarding rents obtained by competition, Mr. Longfield observed:—

(a). This complaint of high rents has been made without ceasing for more than three hundred years. There was never less ground for it than at the present day, although in some instances the rent demanded is still too high, but this chiefly occurs where the landlords are middlemen, or where the property is very small.

(b). Several circumstances concurred in former times to make the competition for land keener, and the demand for high rent more inconsiderate, then than now. One great difference between English and Irish law, the importance of which it is difficult to estimate, was that in Ireland there were no poor laws. The poorer tenant of the class that in England would look to the parish for support, saw no resource in Ireland but to obtain on any terms possession of a sufficient quantity of land to produce as much potatoes as his family could consume, with, if possible, after the potatoes, on the following year, as much corn as with his pigs would be sufficient to pay the rent. The general points and ignorance of the people increased the competition. There was not much difference among the people who applied for a vacant farm. No man had such capital or skill as to enable him to make a greater profit than his competitors, and the most obvious destination was the willingness to offer the highest rent. * *

(c). The law gave some encouragement to this mode of dealing on the part of the landlord, by the absence of poor laws, by the law of distress, which enabled the landlord to help himself without the expense of litigation with an insolvent tenant, and by want practically of any law limitations to affect the landlord's claims against his tenants. The law has been altered in this respect, although scarcely to a sufficient extent.

7. MR. KNIGHT, M.P. (28th March 1870).

Poor Law.

In the reign of Elizabeth, and indeed for several reigns, clearances (evictions) were made in all directions, and repeated Acts of Parliament were passed with the object of preventing them, but without effect. In every country there were many hundreds of able-bodied vagabonds who

lied by theft and rapine, and plundered the country in large gangs. Nothing was safe; sheep-folds had to be watched night and day, magistrates were afraid to do their duty, and the country was in a worse state than Ireland is in now. This state of things was stopped by the settlement law of Charles II. For ninety years, ever since the relief of the poor had been made a legal charge by the 14th of Elizabeth, every man had had a right of relief, but that right had been inoperative. The preamble of the Settlement Act stated that the poor were constantly increasing in numbers; that they were perishing from want in all directions, and that hitherto the Poor Law had been inoperative. But from the passing of the Act of Settlement, clearances ceased in England, the application of the Poor Law was extended, the people became quiet and satisfied, and there had followed a long era of self-government without coercion by soldiers or police, which would not otherwise have been possible. * * In 1838 a Poor Law was bestowed upon Ireland, but there was no Settlement Law in connection with it, that having been opposed by the landlords; and without a Settlement Law, the right of the poor to relief became a merely indefinite right, for having a right everywhere meant having it nowhere. Since the passing of the Irish Poor Law, the work of clearance had gone on even more rapidly than before.

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LORD STANLEY.

PART. 8.

8. (Hansard's Parliamentary Debates.)

I.—LORD STANLEY (*9th June 1845*).

1. (a). In respect of the relative circumstances of landlord and tenant, the condition of things in Ireland and England is very different. In England, though it is certainly true that there are many very large estates, it is also true that there is a large number of only a moderate extent. Property is considerably sub-divided throughout the country; the number of freeholds of moderate extent is large, and the number of very large estates is not, comparatively speaking, so great as in Ireland. Then the landlords of England are, for the most part, resident on the property they hold; and though it would be going too far to say that, generally speaking, they are unencumbered, still, as a body, they are not in that state which renders it necessary for them to press harshly and oppressively upon their tenants; and, in fact, if they did so, the result would be that they would have the farms in their own hands, and they would find great difficulty in obtaining tenants at all.

English and
Irish landlords
and tenants con-
trasted.

(b). Then again, in England, the presence of an intermediate lessee between the landlord and the occupying tenant is the exception, and not the rule. Except in some cases of life-interest, to which it is not necessary that I should refer further, the landlord is, as a general rule, brought into direct communication with his tenant; and a knowledge of circumstances, and a feeling of kindness and consideration on the one side, and perfect confidence on the other, is engendered between landlord and tenant.

(c). Then at the expiration of the lease in England both parties understand, as a matter of course, that the contract between them is at an end, and both are free to make other arrangements. The landlord is

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—
Para. 8, contd.

free to change his tenant if he thinks fit, and to let the farm to some other person who will pay a higher rent for it, or who may be, from other circumstances, a more advantageous tenant; and the tenant, on his part, is free to seek a more eligible farm. Both parties know that a lease is binding only while its term holds, but that from its conditions both parties are free when it expires.

(d). Then again, in England, the farms generally are of some considerable extent—sixty or seventy acres is a small holding for one farmer,—and it often happens that the farms extend to many hundreds of acres.

(e). Here, too, the tenant-farmer is a class distinct from the agricultural labourer; for though there are many tenant-farmers who cultivate their lands with their own hands, yet the class of tenant-farmers in England is distinct as a class from agricultural labourers; and, lastly, every tenant-farmer, on taking a farm in England, and I believe in Scotland, looks, as a matter of course—not founded upon any law certainly, but upon a custom which is rarely departed from—to the landlord, to place the farm, before he enters upon it, in tenantable repair, that is, in regard to the fences, the drains, the dwelling-houses and buildings, and, in short, in regard to all those things which in England are considered as the necessary accompaniments to a farm.

II. (a). But in Ireland the case, in reference to all these various matters, is not only dissimilar, but exactly the reverse. There the number of proprietors of the land is small, and their average holding is large; the landlords, many of them, are non-resident, and consequently but little acquainted with the occupying tenants; there a large portion of the estates is held by middlemen, though, I am happy to say, that practice is to some extent falling into disuse, and they let out the land to the occupying tenants at rack-rents (*loud cries of "Hear, hear"*). I say at rack-rents.

(b). And I must also add that the holding is at will. If leases are granted in Ireland, it is as the exception, and not as the rule; whereas in England it is the rule, and not the exception, unless, indeed, in some few cases where the family of the landlord having been long resident in the district has, in its successive generations, been brought into connection with successive generations of tenants, and in those cases both landlord and tenant, being perfectly and intimately acquainted, have an implicit reliance upon each other's character and honour; but in Ireland, at all events, as I have said, the lease is the exception, and not the rule, and in Ireland the farms were of the smallest possible dimensions. * *

(c). Your Lordships will find on examining the report of the Poor Law Commission, made in 1843, and the evidence on which it is founded, that complaints were made as to the practice of consolidating farms, and of the hardship of the practice which was growing up of throwing several small farms into one large one; and upon the question being asked to what extent the farms were raised by this practice of consolidation, it turned out that these large farms, of which complaint was made, amounted to twenty-five, fifteen, and, in some cases, to no more than ten acres. This proved how small was the average amount of the farms in Ireland when farms of twenty-five down to ten acres (a noble

Lord here made some observation which was not audible; well, take them from fifty, if you will, down to twenty statute acres) were looked upon in Ireland as exorbitant holdings, and these were held under middle men, often tenants-at-will, under a non-resident landlord, and held to an extent not exceeding twenty acres, the universal practice being that all buildings, including even the dwelling house, all fences and drains, which in England were put in repair by the landlord, were expected to be done by the tenant, and if not, they were not done at all.

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(d). Now imagine the case of any one of your Lordships having an estate of 20,000*l.* a year divided into twenty-acre farms, the owner never visiting the tenants, those tenants holding under an intermediate lease, and, as tenants-at-will only, paying a rack-rent, and required not only to make good and keep in repair all drains, fences, and out-buildings, but even to build their own dwelling-houses. Could that noble Lord be surprised to find that no improvement took place in those farms, and that the dwellings of the tenants were mere hovels? Could he be surprised to find on these farms everything neglected and in ruin; the land unproductive, the cultivation defective, and the estate peopled, instead of by an industrious, thriving, and a peaceful, by an idle, a dissolute, and a disturbed population? And yet this, with some honourable exceptions, is not a highly coloured or exaggerated picture of the position of a large portion of the tenantry of Ireland.

III.—THE RIGHT HON'BLE W. E. GLADSTONE (*5th February 1870*).

(a). In Ireland the landlord does not, as a rule, find the capital necessary for the improvement of the soil, although he does so in exceptional and perhaps multiplying instances; in England the landlord is the person who does find that capital. In Ireland the landlord is frequently an absentee, and unhappily this has been so during the whole of the seven hundred years of the connection between the two countries; in England and Scotland complete absenteeism is comparatively rare. In Ireland a great jealousy has prevailed among a large body of the landlords during the last forty years against granting tenures longer than from year to year; whereas in Scotland, on the contrary, the almost universal practice has been to grant much longer terms; and in England there is hardly a county where such jealousy on the part of the landlords is to be found. * *

English and Irish landlords contrasted.

(b). In England and in Scotland, the idea of holding land by contract is perfectly traditional and familiar to the mind of every man; in Ireland, on the contrary, where the old Irish ideas and customs were never supplanted except by the rude hand of violence, and by laws written in the statute book, but never entering into the heart of the Irish people, the people have not generally embraced the idea of the occupation of land by contract; and the old Irish notion, that some interest in the soil adheres to the tenant, even although his contract has expired, is everywhere rooted in the popular mind. * *

Traditions of his proprietary right deeply rooted in the Irish cultivator.

(c). I think that of the agrarian crimes which we have been so recently lamenting, no small portion is to be traced to an interference with the fixed usages of the country, and with what the people believed to be their

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GLADSTONE.

Para. 8, contd.

Parliament altered for the Irish cultivator, like Lord Cornwallis for the Bengal ryot, the whole law which had protected the occupier in his holding, and brought into play new statutes of eviction (Huftum and Punjam).

rights, interferences which were in some cases imprudent, and which in others, beyond a doubt, deserved a stronger epithet.

(d). You (Parliament) have altered the whole law with respect to the defence which protected the Irish occupier in his holding. You have brought into play new statutes of eviction. * * I will refer to only one of these Acts of Parliament—that of 1816—which was passed at a period when the high prices of the war began to be felt, and the high rents could no longer be paid. Parliament was appealed to, under these circumstances, to grant facilities for eviction which had not previously existed.

* * The history of Parliament tells us of a series of interferences in this respect. In many instances these interferences have been unhappy to the occupier, and in some they have been something more than unhappy. I cannot but fear that they have partaken of injustice. The Act of 1810, 56 Geo. III, c. 18, recites in its preamble that such were the expenses and delays of ejectment, that it was absolutely and entirely impracticable as a remedy. But if it were entirely, or in a great degree, impracticable as a remedy, look at the effect of the change—see what a defence that state of the law was to the Irish occupier in the possession of his holding. All that defence we have altered. All that shelter we have stripped away. We have simplified the law against him. We have made ejectments cheap and easy, and notices to quit have descended on the people like snow-flakes. All these things have been done by Parliament, and no compensation has been made to the Irish tenant. * *

(e). With respect to those who may desire the acquisition of land, we propose that loans of public money shall be granted to occupiers desirous to purchase from their landlords any cultivated lands now occupied by themselves, and this arrangement will be so framed as not to restrict the loans to cases of private contract, but to extend them also to those cases where the proprietor, attracted by the advantages of a Parliamentary title, thinks proper to carry his estate into the Encumbered Estates Court. This assistance will only be given to occupiers who are willing to buy where the landlord is willing to sell. They will be required to pay down not less than 25 per cent., and the repayment of the loan will be arranged upon the basis of the Drainage Acts.

The Irish Land Act.

9. The following rough notes relating to the objects of the Irish Land Act are from a paper in Fraser's Magazine for May 1874:—

(a). The entire number of holdings in Ireland in 1870 was 661,931. Four-fifths of these are 30 acres or under, 135,392 are held under lease. Over 100,000 of these are situated outside Ulster, and thus excepted from compensation.

(b). In Ulster the re-adjustment of the rent at periodic intervals is a part of the custom. The right of the landlord to an increased rent, as the price of produce increased, seems to have been acquiesced in. The demand of the tenants has been fixity of tenure at a valuation rent; not that the present rent should be converted into a rent charge.

(c). By the second part of the Irish Land Act, the Legislature has simply sought to facilitate the purchase of their holdings, by tenants from landlords willing to dispose of them for their own interest. Its

object is gradually to create a peasant proprietary throughout the land. * *

(d). The Government valuation of the rental for the whole of Ireland, excepting house or town property, is over ten millions sterling.

(e). The Act enables the Board of Works in Ireland to advance money to tenants for the purchase of their holdings. The purchase money is in all cases paid into the Landed Estates Court, and there protected for all interested parties.

(f). The whole number of landed proprietors in Ireland who have over one hundred acres of land is 13,565. Of these but 5,966, representing property to the amount of 5,089,610*l.* annual rental, or about half that of the whole of Ireland, reside on their estates. The remainder are non-resident. Some reside in Ireland elsewhere than on their estates. But about 2,973, representing property to the amount of 2,470,816*l.* annual rental, are permanent absentees from Ireland. * *

(g). From the foregoing it is evident that in seeking to solve this most difficult question, two principles have been tried, and with different results. Neither resembles those which have prevailed in other countries; for neither acknowledges any co-proprietorship of the soil in the occupiers. The one has been to legalise the Ulster custom, the other to place a heavy tax upon ejectments. Both proceed on the assumption that the tenant deprived of his holding suffers a loss, and seek to compensate him in such respect.

(h). * * In that part of Ulster where the custom of tenant right exists in its integrity, since the manner of estimating the amount of compensation has become known, the landlords have abandoned all wish to obtain possession of the land, satisfied with obtaining a rent fairly estimated. In the other provinces of Ireland, and in that part of Ulster where the custom does not so exist, ejectments are as numerous as before; and the right of the occupiers to dwell unmolested in their holdings, so long as they pay a fair rent, is still unrecognised.

10. MR. J. A. FROUDE (*November 1872.*)

I. (a). We will suppose some one to have been travelling through Ireland in 1802, when the constitution after the Union was finally at work. What would have been his experience? He would have seen three-quarters of a country, richer naturally than Scotland, as rich as the best parts of England, lying a wilderness, dotted with potatoe gardens: districts as large as counties mere wastes of morass; a peasantry ragged and miserable, living in houses in which an English gentleman would not keep his sporting dogs; families—the Irish are the most prolific people in the world—families of twelve or thirteen huddled into hovels more like caves in the earth than human dwelling-places, without windows, with a hole in the thatch to let the smoke out; for furniture, an iron crock and perhaps a stool, a heap of straw or heather for beds; in wet weather, pigs, cows, poultry, and human creatures, all tumbled in together into a space 12 feet long and 8 feet wide; the fat sow, perhaps, the pillow of grown-up girls, the little ones burrowing in the turf-stack; the food, potatoes and buttermilk; the clothes of the father and mother, a bundle of rags; the clothes of the

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Ireland in 1802:
the cottiers
miserably poor.

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Yet not unhappy,
because they
were not
evicted.

children, those which nature gave them. Their holdings were perhaps an acre or two of potatoe ground, for which they were paying the old rack-rents, five or six pounds an acre. The pigs and the cow paid the rent and the priest's dues. The wages, six-pence a day for the half-year and nothing the rest, found a coat and a pair of shoes for the man, a cloak for the wife, and a coloured handkerchief or two for the girls to appear in at mass on a Sunday.

(b). This was the condition of the working peasantry of one of the three kingdoms which composed the wealthiest of existing communities. They were not unhappy. They were light-hearted, and as long as the potatoes lasted, and while they were undisturbed in their miniature farms, they were fairly contented. Their chief alarm was that they were at the landlord's mercy. If another tenant bid above them, or if the landlord wanted the farm, they might at any moment find themselves adrift. No matter that the very ground they occupied owed its value to them. They had drained and fenced and tilled it after their fashion. They found it barren moor. They made it able, at any rate, to grow food for a dozen human creatures. The landlord called it his, and if it so pleased his mightiness, he could turn them into the ditch to starve.

(c). The landlords themselves were of three sorts,—the magnates who lived in splendour in London, and managed the estates by middlemen; a few cultivated and distinguished resident noblemen and gentlemen; and the squires and squireens who spent their lives in hunting, gambling, drinking, and fighting duels, themselves out at elbows, idle, extravagant, in debt, and haunted by the bailiff, their lands often in the hands of creditors, who of course squeezed out of the tenantry the last obtainable penny. * *

(d). Such Ireland remained after the union, after England had been pretending to govern it for six hundred years. * *

Before the
famine the land-
lords were
mostly absentees
or embarrassed.

II. (a). These two measures, the establishment of the Irish police and the establishment of Irish national education, were in every way admirable. But the sorest difficulty, which remained untouched, was the system of landed tenures. A third of the Irish soil was still owned by absentees. Half the rest belonged to needy, unthrifty gentlemen, whose estates were mortgaged to the brim; who were out at elbows like their tenants, without a shilling to spend on drains, or fences, or cottages, or farm buildings. If they were themselves disposed to be indulgent, their creditors, the money-lenders, exacted the last ounce of their pound of flesh. The peasantry had multiplied astonishingly. In 1782 there were but three¹ million inhabitants in Ireland. In 1846 the three millions had become nine.² In the good old times their lawless habits had kept their numbers down; English administration, if it had done little else, had put an end to private war and plunder; and, deprived of its natural check, the Irish race had trebled itself in three-quarters of a century. The Catholic clergy encouraged early marriages because they prevented immorality. Landlords made no objection, for the more people there were, the higher the rents. There were then no poor-rates in Ireland.

¹ Five millions in 1801, per Registrar General's estimates.
² 8'3 millions.

A young lad and a young lass fell in love. The agent assigned them an acre or two of unreclaimed mountain or bog. They threw up a few sods for a house, set a few potatoes in the peat, started a pig and a cow if they had a five-pound note to begin life with, and they were as well furnished as any of their neighbours. * *

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So it went on. Of the nine millions, it was reckoned that there were at least two million beggars—creatures who were absolutely idle, who wandered from cabin to cabin, asking charity for the love of God, and never asking in vain. * *

(b). The potatoe failed, and six million people were suddenly deprived of the main staple of their sustenance. Too much credit cannot be allowed to the patience with which the Irish bore up through those dreadful years. The Irish peasantry, from our first acquaintance with them, have shown a capacity beyond example for the silent endurance of suffering. They resent agrarian wrongs after their methods where they are distinctly traceable to injustice. Broad masses of misery they have accepted as if allotted to them by an inscrutable providence. When the famine came, they lay down and died uncomplainingly. A quarter of a million, at least, perished of hunger. * *

Irish famine.
Half the landlords were ruined, half the people emigrated.

(c). As one consequence of the Irish famine, the English Parliament—the landlords' Parliament—resolved at once that the Irish land should support the Irish poor. Before a shilling of rent should go into a landlord's pocket, every human stomach in a district should at least be supplied with food; and a poor-law was passed, which in some parts of Ireland amounted to confiscation. The days of idleness and amusement for squires and squireens were over. Spendthrifts who had encumbered their estates with mortgages were ruined. * * This was one great measure of purgation. Another was the exodus. There were nine millions in Ireland in 1846. There are now five millions and a half. A quarter of a million died; allow for the natural rate of increase, and you will find that between four and five millions have emigrated—half as many again as all the inhabitants of Scotland. * *

(d). Meanwhile, in Ireland itself there was a social revolution. The great landlords—those whose fortunes enabled them to weather the storm—changed their relations with their Irish properties. They had learnt their lesson at last. Skilled and trained agents took the place of the middlemen. Small holdings were discouraged. The rents were cut down, wages were doubled and trebled, and half the revenue of well-administered properties is now expended on the spot in improvements. On many great baronies that I know, where the famine bore the heaviest, the peasantry are more considered, and are better off a great deal, than the English agricultural labourer. This poor fellow is lifting up his head at last; but if I had to choose between working for wages for an English farmer, or holding half-a-dozen acres on a well-conducted estate in Munster, I should not be long in making up my mind.

Middlemen discarded.

(e). The good landlords, it may be said, are few, and whether good or bad, free men ought not to lie at the mercy of mortals. A free man should own no master but the law of his country, and depend on nothing but his own industry. * * *

Free men not to lie at the mercy of mortals.

III. The history of the working of the Encumbered Estates Act is so remarkable and characteristic of a particular class of people in Ireland,

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that I must ask you to attend to it particularly. Before the famine and before the poor-law, the more families there were on the estates the higher the rent. After the famine, when, in times of extremity, the support of the poor was thrown on the land, and rates were levied on it for their maintenance, a large population was a serious encumbrance. There were very rarely leases in Ireland. Landlords liked at all times to hold their tenants in hand, that they might command their votes at elections. They had before encouraged the multiplication of them. They now turned round and said: "There are too many of you. Four families of you are living on ground that will only support one, and we cannot allow you to remain." Especially this was the language used by the purchasers under the Encumbered Estates Act. * * The purchasers were chiefly Irish men of business, who had made money, and wished to invest it to advantage; and as the worst tyrants of the poor in the eighteenth century had been the Irish middlemen, so now the Irish who bought under the Act became the hardest of land-owners.

On estates so bought the rents were generally increased, and the superfluous families cleared off without remorse or hesitation. * * *

The land is the home of the Irish people, and the deprivation of their rights in land has smitten the country with a curse.

IV. (a). The heart of the matter lies in the land. The land is the home of the Irish people. The land is the life of the Irish people. Agriculture is their only industry; and those who till the soil have the first right to the fruits of the soil. Of these rights, from immemorial time, under one plea or another, under Chief's law and Norman law, under Scot and Saxon, under English agent and Irish middleman, the peasantry have been robbed, and it has been this systematic plunder which has deprived them of the natural motive to exertion, which has bred, as in a hot-bed, the unthrifty improvident habits that we all deplore, and has smitten one of the most beautiful countries in the world with barrenness.

(b). The land question was the secret splinter in the wound, and the English Parliament set to work to remove it. The Irish Land Act, passed three years ago by Mr. Gladstone, is the most healing measure that has been devised for Ireland during two centuries at least. * * The landlord cannot evict the meanest peasant now, without compensating him for every stroke of work which he has put into the soil. He must pay a further fine for disturbing him.—(*J. A. Froude, November 1872.*)

11. MR. JAMES CAIRD (*The Landed Interest, &c., 1878*).

IRELAND.

Encumbered
Estates Act.

In a few years land to the value of twenty-five millions sterling was disposed of under the Encumbered Estates Act, twenty-four of which were distributed among creditors. In order to secure the land-owners' prompt attention in future to the condition of the people, the incidence of the poor rates, which had previously been placed wholly on the tenant-occupier, was divided equally between him and the land-owner. In fifteen years, emigration and the sale of encumbered estates had removed the most needy class of the population. Prosperity then began again to dawn upon agriculture in Ireland; works of improvement followed the introduction of capital, supplied partly by Government loans and partly by new land-owners. Labour having become less

plentiful was better employed and more liberally paid, and the more energetic of small farmers were ready to enlarge their holdings on every favourable opportunity. As time went on, a great change was found to have taken place; the old eagerness for the occupancy of land returned, but not for its sub-division. In less than thirty years, 270,000 of the smallest holdings were merged into adjoining larger farms, one-half of the small holdings of 1845 having totally disappeared. The tide of emigration began to turn, extreme poverty ceased, the proportion of paupers to population became much lower, and the costs of poor-relief nearly one-half less than in either England or Scotland. This was accompanied by better wages to the labourer, higher profits to the farmer, and a rise in the value of land, all fostered by a growing demand for the kind of produce which the soil and climate of Ireland are specially adapted to yield. But the lesson left by the previous disaster has led to the gravest distrust in the system of very small holdings, in a country producing neither wine nor oil, and where the occupier is not the owner of the land. * * *

The circumstances of Ireland eight years ago appeared favourable for the creation of a class of peasant-proprietors, and Parliament resolved to give the principle a trial. Two opportunities presented themselves; first, in 1869, on the disestablishment of the church, which possessed upwards of 10,000 small holdings of land, in the benefices situated all over the country. The pre-emption of these was offered to the tenants on terms most favourable to them, both as to price and payment, and nearly two-thirds of the offers were promptly accepted. Again, in 1870, the Irish Land Act contained provisions expressly favouring the system; but, though great advantages in regard to terms of payment were also offered by that Act, the results hitherto have been comparatively small. The cause of the difference is very plain. In the first case, the disposal of the lands was imperative, and did not occasion the sub-division of property; while the vendors, the Church Commissioners having no one to consult but themselves, offered these small holdings at low fixed prices without competition. In the second case, on the other hand, it is the duty of the Landed Estates Court to get the best price they can for the land-owner, who may very naturally object to allow small portions to be sold here and there out of his estate to suit the convenience of individual tenants. The farmers, moreover, begin to find themselves very secure in their possession as tenants, under the clauses of the Act, and have thus less inducement to buy the fee-simple; and the land-owners, participating in the general prosperity, are no longer under pressure to sell at the low prices hitherto realised. It is thus, not from any defects in the Land Act, but from the improved condition of the country, and the increased security given to farmers' capital by the Act itself, that this branch of it has become less operative than was anticipated.

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Mr. J. S. MILL.

Para. 12.

One-half the
cottier farms
disappeared.

12. MEANS OF ABOLISHING COTTIER TENANCY—(*Mr. J. S. Mill—Principles of Political Economy, Book II, Chapter X*).

I. The case of Ireland is similar in its requirements to that of India. In India, though great errors have from time to time been committed,

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MR. J. S. MILL.

Para. 12, contd.

Means of abolishing cottier tenancy.

no one ever proposed, under the name of agricultural improvement, to eject the ryots, or peasant-farmers, from their possession; the improvement that has been looked for has been through making their tenure more secure to them, and the sole difference of opinion is between those who contend for perpetuity, and those who think that long leases will suffice. The same question exists as to Ireland; and it would be idle to deny that long leases, under such landlords as are sometimes to be found, do effect wonders, even in Ireland. But then they must be leases at a low rent. Long leases are in no way to be relied on for getting rid of cottierism. During the existence of cottier tenancy, leases have always been long,—twenty-one years and three lives concurrent was the usual term. But the rent being fixed by competition, at a higher amount than could be paid, so that the tenant neither had, nor could by any exertion acquire, a beneficial interest in the land, the advantage of a lease was merely nominal. In India, the Government, where it has not imprudently made over its proprietary rights to the zemindars, is able to prevent this evil, because, being itself the landlord, it can fix the rent according to its own judgment; but under individual landlords, while rents are fixed by competition, and the competitors are a peasantry struggling for subsistence, nominal rents are inevitable, unless the population is so thin, that the competition itself is only nominal. The majority of the landlords will grasp at immediate money and immediate favour; and so long as they find cottiers eager to offer them everything, it is useless to rely on them for tempering the vicious practice by a considerate self-denial.

II. A perpetuity is a stronger stimulus to improvement than a long lease, not only because the longest lease, before coming to an end, passes through all the varieties of short leases down to no lease at all, but for more fundamental reasons. It is very shallow, even in pure economics, to take no account of the influence of imagination; there is a virtue in “for ever” beyond the longest term of years; even if the term is long enough to include children, and all whom a person individually cares for, yet until he has reached that high degree of mental cultivation at which the public good (which also includes perpetuity) acquires a permanent ascendancy over his feelings and desires, he will not exert himself with the same ardour to increase the value of an estate, his interest in which diminishes in value every year. Besides, while perpetual tenure is the general rule of landed property, as it is in all the countries of Europe, a tenure for a limited period, however long, is sure to be regarded as something of inferior consideration and dignity, and inspires less of ardour to obtain it, and of attachment to it when obtained.

III. But where a country is under cottier tenure, the question of perpetuity is quite secondary to the more important point—a limitation of the rent. Rent paid by a capitalist who farms for profit, and not for bread, may safely be abandoned to competition; rent paid by labourers cannot, unless the labourers were in a state of civilization and improvement which labourers have nowhere yet reached, and cannot easily reach under such a tenure. Peasant-rents ought never to be arbitrary,—never at the discretion of the landlord; either by custom or law it is imperatively necessary that they should be fixed; and where no mutually advantageous custom, such as the metayer system of Tuscany, has estab-

lished itself, reason and experience recommend that they should be fixed by authority; thus changing the rent into a quit-rent, and the farmer into a peasant-proprietor.

IV. For carrying this change into effect on a sufficiently large scale to accomplish the complete abolition of cottier tenancy, the mode which obviously suggests itself is the direct one, of doing the thing outright by Act of Parliament, making the whole land of Ireland the property of the tenants, subject to the rents now really paid (not the nominal rents), as a fixed rent charge. This, under the name of "fixity of tenure," was one of the demands of the Repeal Association during the most successful period of their agitation; and was better expressed by Mr. Conner, its earliest, most enthusiastic, and most indefatigable apostle, by the words "a valuation and a perpetuity." In such a measure there would not have been any injustice, provided the landlords were compensated for the present value of the chances of increase which they would be prospectively required to forego. The rupture of existing social relations would hardly have been more violent than that effected by the ministers Stein and Hardenberg, when by a series of edicts in the early part of the present century, they revolutionised the state of landed property in the Prussian monarchy, and left their names to posterity among the greatest benefactors of their country. To enlightened foreigners writing on Ireland, Von Raumer and Gustave de Beaumont, a remedy of this sort seemed so exactly and obviously what the disease required, that they had some difficulty in comprehending how it was that the thing was not yet done. * *

V. That there should be none but peasant-proprietors, is in itself far from desirable. * * A large proportion, also, of the present holdings are probably still too small to try the proprietary system under the greatest advantages; nor are the present tenants always the persons one would desire to select as the first occupants of peasant properties. There are numbers of them on whom it would have a more beneficial effect to give them the hope of acquiring a landed property by industry and frugality, than the property itself in immediate possession.

VI. There are, however, much milder measures, not open to similar objections, and which, if pushed to the utmost extent of which they are susceptible, would realize in no inconsiderable degree the object sought. One of them would be to enact that whoever reclaims waste land becomes the owner of it, at a fixed quit-rent equal to a moderate interest on its mere value as waste. It would of course be a necessary part of this measure to make compulsory on landlords the surrender of waste lands (not of an ornamental character) whenever required for reclamation.

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MR. J. S. MILL.

Para. 12, contd.

Means of abolishing cottier tenancy.

APPENDIX XXX.

THE ROMAN EMPIRE.

APP.
XXX.

Para. 1.

1. The following extracts from Dr. Mommsen's History of Rome mark the significance of the principal facts in the present condition of agriculture, and the distribution of land in England. Dr. Mommsen used the Varronian computation by years of the city. The year 1 of the city is identical with the year 753 B. C. The year B. C. is given on the margin.

I.—U. C. 260.

493.

Resident land-
lords.

As the pernicious institution of middlemen remained foreign to the Romans, the Roman landlord found himself not much less fettered to his land than was the lessee and the farmer; he saw to, and took part in, everything himself, and the wealthy Roman esteemed it his highest praise to be reckoned a good landlord. His house was on his land; in the city he had only a lodging for the purpose of attending to his business there. * * The free tenants on sufferance, sprung from families of decayed farmers, dependents, and freedmen, formed the great bulk of the proletariat, and were not much more dependent on the landlord than the petty temporary lessee inevitably is with reference to the great proprietor. The slaves tilling the fields for a master were beyond doubt far less numerous than the free tenants.

II.—U. C. 387 to 479.

387 to 275.

Small farms
flourished during
this period.

(a). In the national economy agriculture was, and remained, the social and political basis both of the Roman community and of the new Italian State. The *comitia* and the army consisted of Roman farmers; what as soldiers they had acquired by the sword, they secured as colonists by the plough. The insolvency of the middle class of landholders gave rise to the formidable internal crises of the third and fourth centuries, amidst which it seemed as if the young republic could not but be destroyed. The revival of the Latin farmer-class, which was produced during the fifth century, partly by the large assignments of land and incorporations, partly by the fall in the rate of interest and the increase of the Roman population, was at once the effect and the cause of the mighty development of Roman power. The acute soldier's eye of Pyrrhus justly recognised the cause of the political and military ascendancy of the Romans in the flourishing condition of the Roman farms. But the rise also of husbandry on a large scale appears to fall within this period. In earlier times, indeed, there already existed landed estates of at least

But husbandry
on a large scale
made its
appearance.

comparatively large size; but their management was not farming on a large scale; it was simply a husbandry of numerous small parcels. On the other hand, the enactment of the law of 387 may well be regarded as the oldest trace of the later centralized farming of estates; and it deserves notice that even here at its first emergence it essentially rests on slaveholding. * *

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XXX.

SMALL FARMS.
Para. 1, contd.

(b). Still less can we ascertain how far this method of husbandry had already during this period spread; only, the history of the wars with Hannibal leaves no doubt that it cannot yet have become the rule, nor can it have yet absorbed the Italian farmer-class. But where it did come into vogue, it annihilated the older clientship based on the *precarium*; just as the modern system of large farms has been formed by the suppression of petty holdings and the conversion of hides into farm-fields. It admits of no doubt that the encroachments on this agricultural *clientela* very materially contributed towards the distress of the class of small cultivators. * *

The encroachments of the large estates caused distress to the small cultivators.

(c). On the other hand, from the emphatic moral importance which in the Roman commonwealth attached to the possession of land, and from its constituting the sole basis of political privileges, a basis which was infringed for the first time only towards the close of this epoch, it was undoubtedly at this period usual for the fortunate speculator to invest part of his capital in land. It is clear enough also from the political privileges given to freedmen possessing freeholds that the Roman statesmen sought in this way to diminish the dangerous class of the rich who had no land.

III.—502 to 605 U. C.

(a). Far more practical and more useful were the attempts made to counteract the spread of decay by indirect means; among which, beyond doubt, the assignments of new farms out of the domain land occupy the first place. These assignments were made in great numbers and of considerable compass in the period between the first and second war with Carthage, and again from the close of the latter till towards the end of this epoch. * * * * Cato, and those who shared his opinions, demanded such steps, pointing, on the one hand, to the devastation of Italy by the Hannibalic war and the alarming decrease of the farms and of the free Italian population generally, and, on the other, to the widely extended possessions of the nobles—occupied along with, and similarly to, property of their own—in Cisalpine Gaul, in Samnium, and in the Apulian and Bruttian districts; and although the rulers of Rome did not probably comply with his demands to the extent to which they might and should have complied with them, yet they did not remain deaf to the warning voice of so judicious a man.

252 to 149.

Efforts to counteract the spread of decay by revising small farms.

(b). It was in the sixth century that the wholesale system, as regards both the cultivation of land and the management of capital, became first established under the form and on the scale which afterwards prevailed. * * The human labour on the farm was regularly performed by slaves. * * The slaves were like the larger cattle, not bred

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XXX.

Para. 1, contd.

CULTIVATION BY
SLAVES.

on the estate, not purchased at an age capable of labour in the slave-market; and when through age or infirmity they had become incapable of working, they were again sent with other refuse to the market. * * The whole system was pervaded by the utterly unscrupulous spirit characteristic of the power of capital. Slaves and cattle were placed on the same level. The slave and the ox were fed properly so long as they could work, because it would not have been good economy to let them starve; and they were sold like a worn-out ploughshare when they became unable to work, because in like manner it would not have been good economy to maintain them longer. * *

npoi
Sicilian corn
destroyed the
small farms.

(c). When the small holdings ceased to yield any substantial return through the importation of corn from Sicily and the artificial cheapening of it for the people of the capital, the farmers were irretrievably ruined, and the more so that they gradually, although more slowly than the other classes, lost the moral tone and the frugal habits of the earlier ages of the republic. It was merely a question of time, how rapidly the hides of the Italian farmers would come, by purchase or by resignation, to be merged in the larger properties. The landlord was better able to maintain himself than the farmer. The former produced at a cheaper rate than the latter, when, instead of letting his land according to the older system of petty temporary lessees, he caused it according to the newer system to be cultivated by his slaves. Accordingly, where this course had not been adopted at an earlier period, the competition of Sicilian slave-corn compelled the Italian landlord to adopt it, and to have the work performed by slaves without wife or child instead of families of free labourers.

The large estates
saved themselves
by changing
from tillage to
pasturage.

(d). The landlord, moreover, could hold his ground better against competitors by means of improvements or changes in cultivation, and he could content himself with a smaller return from the soil than the farmer who wanted capital and intelligence, and who merely had what was requisite for his subsistence. Hence the Roman landholder comparatively neglected the culture of grain, which in many cases seems to have been restricted to the raising of the quantity required for the staff of labourers, and gave increased attention to the producing of oil and wine, as well as to the breeding of cattle. * * The rearing of cattle yielded, on the whole, better results than arable husbandry. * *

Special circum-
stances also
favoured the
growth of pas-
toral husbandry.

(e). But an injurious effect was produced by the Claudian law to be mentioned afterwards (shortly before 536), which excluded the senatorial houses from mercantile speculation, and thereby artificially compelled them to invest their enormous capitals mainly in land; or, in other words, to replace the old homesteads of the farmers by estates under the management of land-stewards and by pastures for cattle. Moreover, special circumstances tended to favour the growth of pastoral husbandry as contrasted with agriculture, although the former was far more injurious to the State. First of all, this form of extracting profit from the soil—the only one which in reality demanded and rewarded operations on a great scale—alone corresponded to the vast capital and to the enterprising spirit of the capitalists of the age. An estate under cultivation, while not demanding the presence of the master constantly, required his frequent appearance on the spot, while the circumstances did not well

admit of his enlarging such an estate or of his multiplying his possessions except within narrow limits; whereas an estate under pasture admitted of unlimited enlargement, and claimed little of the owner's attention. For this reason men already began to convert good arable land into pasture even at an economic loss—a practice which was prohibited by legislation (we know not when, perhaps about this period), but hardly with success. The growth of pastoral husbandry was favoured also by the occupation of the domain land. As the portions so occupied were ordinarily large, the system gave rise almost exclusively to great estates; and not only so, but the occupiers of these possessions which might be resumed by the State at pleasure and were in law always insecure, were afraid to lay out any considerable expense in their cultivation by planting vines, for instance, or olives. The consequence was, that these lands were mainly turned to account as pasture. * *

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Para. 1, contd.
EXTENSION OF
PASTURAGE.

(f). One of the most important consequences of this mercantile spirit which displayed itself with an intensity hardly conceivable by those not engaged in business, was the extraordinary impulse given to the formation of associations. * * Indications are even found of the occurrence among the Romans of that feature so characteristic of the system of association—a coalition of rival companies in order jointly to establish monopolist prices. * * It was a general rule of Roman economy that one should rather take small shares in many speculations than speculate independently. * * *

The commercial spirit which pervaded these changes developed in joint stock enterprise.

(g). The Romans perceived, moreover, as it was not difficult to perceive, that it was of far more consequence to give a different direction to the whole national economy than to exercise a police control over speculation. It was such views mainly that men like Cato enforced by precept and example on the Roman agriculturist. "When our forefathers," continues Cato in the preface just quoted, "pronounced the eulogy of a worthy man, they praised him as a worthy farmer and a worthy landlord; he who was thus commended was thought to have received the highest praise. The merchant I deem energetic and diligent in the pursuit of gain; but his calling is too much exposed to perils and mischances. On the other hand, farmers furnish the best men and the ablest soldiers; no calling is so honourable, safe, and inoffensive, as theirs, and those who occupy themselves with it are least liable to evil thoughts." * * The description of the husbandman which Cato gives is excellent and quite just, but how does it correspond to the system itself which he portrays and recommends? If a Roman senator, as must not unfrequently have been the case, possessed four such estates as that described by Cato, the same space, which in the olden time when small holdings prevailed had supported from 100 to 150 farmers' families, was now occupied by one family of free persons, and about 50 for the most part unmarried slaves. If this was the remedy by which the decaying national economy are to be restored to vigour, it bore, unhappily, an aspect of extreme resemblance to the disease.

But it is farmers that furnish the best men and the ablest soldiers.

(h). The general result of this system is only too clearly obvious in the changed proportions of the population. It is true that the condition of the various districts of Italy was very unequal, and some were even

APP.
XXX.Para. 1, *contd.*DECLINE OF
THE RURAL
POPULATION.

prosperous, * but others had been drained of their population by the ravages and the demands of war.

(i). With every allowance for the inequality in the political and economic circumstances of the different districts, and for the comparatively flourishing condition of several of them, the retrogression is yet on the whole unmistakable, and it is confirmed by the most indisputable testimonies as to the general condition of Italy. Cato and Polybius agree in stating that Italy was at the end of the sixth century far weaker in population than at the end of the fifth, and was no longer able to furnish armies so large as in the first Punic war. * * At the same time the slave population increased as the free population declined. * * The nation was visibly diminishing, and the community of free citizens was resolving itself into a body composed of masters and slaves; and although it was, in the first instance, the two long wars with Carthage which decimated and ruined both the burgesses and the allies, the Roman capitalists beyond doubt contributed quite as much as Hamilcar and Hannibal to the decline in the vigour and the numbers of the Italian people. No one can say whether the Government could have rendered help; but it was an alarming and discreditable fact that the circles of the Roman aristocracy, well meaning and energetic as for the most part they were, never once showed any insight into the real gravity of the situation, or any foreboding of the full magnitude of the danger. * *

IV.—U. C. 600 to 650.

154 to 104.

Decline of the
spirit of the
Roman senate.

(a). Seventy years before, when the Illyrians had in a similar way laid hands on Roman deputies, the senate of that day had erected a monument to the murdered in the market-place, and had with an army and fleet called the murderers to account; on the other hand, the senate of this period (592—600) likewise ordered a monument to be raised to the murdered Guardian Regent of Syria; but instead of embarking troops for Syria they recognised the murderer Demetrius as king of the land. They were forsooth now so powerful, that it seemed superfluous¹ to guard their own honour. * *

(b). The capitalists continued to buy out the small land-holders, or, indeed, if they remained obstinate, to seize their fields without title of purchase; in which case, as may be supposed, matters were not always amicably settled.

(c). If matters were to go on at this rate (of decrease of burgesses), the burgess-body would resolve itself into planters and slaves; and the Roman State might at length, as was the case with the Parthians, purchase its soldiers in the slave market. Such was the internal condition of Rome when the State entered on the seventh century of its existence.

V.—U. C. 650.

The social ruin of Italy spread with alarming rapidity; since the aristocracy had given itself legal permission to buy out the small holders, and in its new arrogance allowed itself with growing frequency to drive them out, the farms disappeared like rain-drops in the sea.

¹ England in 1877 and 1878.

That the economic oligarchy at least kept pace with the political, is shown by the expression employed about 650 by Lucius Marcus Philippus, a man of moderate democratic views that there were among the whole burgesses hardly 2,000 wealthy families.

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XXX.

Para. 1, contd.

DECLINE OF THE
SPIRIT OF THE
ROMAN SENATE.

VI.—U.^c. 704 to 710 (*Julius Cæsar*).

(a). The corn distributions in the capital had hitherto been looked on as profitable prerogative of the community which ruled, and because it ruled, had to be fed by its subjects. This infamous principle was set aside by Cæsar; but it could not be overlooked that a multitude of wholly destitute burgesses had been protected solely by these largesses of food from starvation. In this aspect Cæsar retained them. While according to the Sempronian ordinance renewed by Cato every Roman burgess settled in Rome had possessed a legal claim to breadcorn without payment, this list of recipients, which had at last risen to the number of 320,000, was reduced, by the exclusion of all individuals having means or otherwise provided for, to 150,000, and this number was fixed once for all as the maximum number of recipients of free corn; at the same time an annual revision of the list was ordered, so that the places vacated by removal or death might be filled up with the most needful among the applicants. By this conversion of a political¹ privilege into a provision for the poor, a principle remarkable in a moral as well as in a historical point of view, came for the first time into living operation.

Corn distribu-
tions in the
capital.

* * It was the Attic civilization which first developed, in the Solonian and subsequent legislation, the principle that it is the duty of the community to provide for its invalids and for the poor generally; and it was Cæsar that first developed what in the restricted compass of Attic life had remained a municipal matter into an organic institution of State, and transformed an arrangement which was a burden and a disgrace to the commonwealth into the first of those institutions—in modern times equally numerous and beneficial—where the infinite depth of human compassion contends with the infinite depth of human misery. * *

(b). On the other hand, Cæsar laboured energetically to diminish the mass of the free proletariat. The constant influx of persons brought by the corn-largesses to Rome was, if not wholly stopped, at least very materially restricted by the conversion of these largesses into a provision for the poor limited to a fixed number. The ranks of the existing proletariat were thinned on the one hand by the tribunals, which were instructed to proceed with unrelenting rigour against the rabble; on the other hand, by a comprehensive trans-marine colonisation;—of the 80,000 colonists whom Cæsar sent beyond the seas in the few years of his government, a very great portion must have been taken from the lower ranks of the population of the capital; most of the Corinthian settlers indeed were freedmen. * *

(c). It was a far more difficult task to remedy the deep disorganisation of Italian society. Its radical misfortunes were those which we previously noticed in detail,—the disappearance of the agricultural,

¹ Manchester claims a like privilege; it has obtained free corn at a present imminent peril to English farmers, and it now demands that the wherewithal for buying the corn should be afforded to it by repeal of the Indian import duty on cotton goods.

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XXX.

Para. 1, contd.

DECREASE
OF RURAL,
UNNATURAL
INCREASE OF A
MERCANTILE
POPULATION.

and the unnatural increase of the mercantile population, with which an endless train of other evils was associated. The reader will not fail to remember what was the state of Italian agriculture. In spite of the most earnest attempts to check the annihilation of the small holdings, farm husbandry was scarcely any longer the predominant species of economy during this epoch in any region of Italy proper, with the exception, perhaps, of the valleys of the Apennines and Abruzzi. * * Generally the management of estates, worked as they were on the planter-system,¹ had reached, in an economic point of view, a height scarcely to be surpassed. * * The solid Italian husbandry obtained at this period, when the general development of intelligence and abundance of capital rendered it fruitful, far more brilliant results than ever the old system of small cultivators could have given; and was carried even already beyond the bounds of Italy, for the Italian agriculture turned to account large tracts in the province by raising cattle and even cultivating corn.

Low rate of
interest; capital
flowed to Rome,
as now to
London.

(d). In order to show what dimensions money-dealing assumed by the side of this estate husbandry unnaturally prospering over the ruin of the small farmers; how the Italian merchants vying with the jews poured themselves into all the provinces and client-states of the kingdom; and how all capital immediately flowed to Rome, it will be sufficient, after what has been already said, to point to the single fact that in the money-market of the capital the regular rate of interest at this time was 6 per cent., and consequently money there was cheaper by a half than it was on an average elsewhere in antiquity.

Fearful dispro-
portion in
distribution of
wealth.

(e). In consequence of this economic system, based both in its agrarian and mercantile aspects on masses of capital and on speculation, there arose a most fearful disproportion in the distribution of wealth. The often used and often abused phrase of a commonwealth composed of millionaires and beggars applies, perhaps, nowhere so completely as to the Rome of the last age of the republic. * *

A considerable
proportion of
population
emigrated to
foreign lands.

(f). In consequence of such a social condition, the Latin stock in Italy underwent an alarming diminution, and its four provinces were overspread, partly by parasitic emigrants, partly by sheer desolation. A considerable portion of the population of Italy flocked to foreign lands. Already the aggregate amount of talent and of working power which the supply of Italian magistrates and Italian garrisons for the whole domain of the Mediterranean demanded, transcended the resources of the peninsula, especially as the elements thus sent abroad were in great part lost for ever to the nation. For the more that the Roman community grew into an empire embracing many nations, the more the governing aristocracy lost the habit of looking on Italy as their exclusive home; while of the men levied or enlisted for service, a considerable portion perished in the many wars, especially in the bloody civil war, and another portion became wholly estranged from their native country by the long period of service which sometimes lasted for a generation. * * As a compensation for these, Italy obtained on the one hand the proletariat of slaves and freedmen, on the other hand, the craftsmen and traders flocking thither from Asia Minor, Syria, and Egypt, who flourished chiefly in

¹ i.e., with slave labour.

the capital and still more in the sea-port towns of Ostia, Puteoli, and Brundisium. * *

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XXX.

Para. 1, contd.

A dreadful picture,—this picture of Italy under the rule of an oligarchy of rich men.

(g). It is a dreadful picture,—this picture of Italy under the rule of the oligarchy. There was nothing to bridge over or soften the fatal contrast between the world of the beggars and the world of the rich. The more clearly and painfully this contrast was felt on both sides, the giddier the height to which riches rose, the deeper the abyss of poverty yawned. The more frequently, amidst that changeful world of speculation and playing at hazard, were individuals tossed from the bottom to the top, and again from the top to the bottom. The wider the chasm by which the two worlds were externally divided, the more completely they coincided in the like annihilation of family life (which is yet the germ and core of all nationality), in the like luxury, the like unsubstantial economy, the like unmanly dependence, the like corruption differing only in its scale, the like demoralization of criminals, the like longing to begin the war with property. Riches and misery in close league drove the Italians out of Italy, and filled the peninsula partly with swarms of slaves, partly with awful silence. It is a terrible picture, but not one peculiar to Italy. Wherever the government of capitalists in a slave-state has fully developed itself, it has desolated God's fair world in the same way. As rivers glisten in different colours, but a common sewer everywhere looks like itself, so the Italy of the Ciceronian epoch resembles substantially the Hellas of Polybius, and still more decidedly the Carthage of Hannibal's time, where in exactly similar fashion the all-powerful rule of capital ruined the middle class, raised trade and state-farming to the highest prosperity, and ultimately led to a (hypocritically white-washed) moral and political corruption of the nation. * * *

But the terrible picture is not peculiar to Italy.

(h). In the agrarian question Cæsar, who already in his first consulship had been in a position to regulate it, more judicious than Tiberius Gracchus, did not seek to restore the farmer-system at any price, even at that of a revolution (concealed under clauses) directed against property. By him, on the contrary, as by every other genuine statesman, the security of that which is property, or is at any rate regarded by the public as property, was esteemed as the first and most inviolable of all political maxims, and it was only within the limits assigned by this maxim that he sought to accomplish the elevation of the Italian small holdings which appeared to him as a vital question for the nation. Even as it was, there was much still left for him in this respect to do. Every private right, whether it was called property or designated as heritable possession, whether traceable to Gracchus or to Sulla, was unconditionally respected by him. On the other hand, Cæsar, after he had, in his strictly economical fashion—which tolerated no waste and no negligence even on a small scale—instituted a general revision of the titles to Italian property by the revived commission of twenty, destined the whole actual domain land of Italy (including a considerable portion of the lands that were in the hands of spiritual guilds, but legally belonged to the State) for distribution in the Gracchian fashion, so far, of course, as it was fitted for agriculture. The Apulian summer and the Samnite winter pastures belonging to the State continued to be domain; and it

Julius Cæsar's reforms.

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was at least the design of the Emperor, if these domains should not suffice, to procure the further land requisite by the purchase of Italian estates from the public funds.

(i). In the selection of the new farmers provision was naturally made first of all for the veteran soldiers, and, as far as possible, the burden which the levy imposed on the mother-country was converted into a benefit by the fact that Cæsar gave the proletarian, who was levied from it as a recruit, back to it as a farmer; it is remarkable also that the desolate Latin communities, such as Veii and Capua, seem to have been especially provided with new colonists. The regulation of Cæsar that the new owners should not be entitled to alienate the lands received by them till after twenty years, was a happy medium between the full bestowal of the right of alienation, which would have brought the larger portion of the distributed land speedily back into the hands of the great capitalists, and the permanent restrictions on free trade in land which Tiberius Gracchus and Sulla had enacted, both equally in vain.

2. Multitudes of joint-stock companies; a low rate of interest; the wealth of the provinces flowing to Rome; riches multiplying to amounts which by their vastness must have astonished and delighted the Cairds of that era; large, colossal estates; a diminished rural population; emigration of Italy's most energetic and ablest sons to other lands, as now recommended for England by Mr. Caird;—a hideous contrast between rich and poor;—accompanied the decline of the Roman Empire: the Anglo-Saxon race is, however, so much superior to the Roman conquerors of the world, that history will not reproduce itself, and England may continue to wax very rich, while her millions of rural population remain wretchedly poor.

APPENDIX XXXI.

MISCELLANEOUS.

1. ANALOGIES AND CONTRASTS.

I.—ENGLISH AND IRISH LAND SYSTEMS.

(a). The land systems of England and Ireland, though closely analogous in many respects as regards both history and structure, present nevertheless some features of striking dissimilarity. The prominent Irish land question is one relating to agriculture tenure, though it is so because the system in its entirety has prevented, not only the diffusion of landed property, but also the rise of manufactures, commerce, and other non-agricultural employments. In England, on the other hand, notwithstanding monstrous defects in the system of tenure, the prominent land question is one relating to the labourer, not to the farmer, and to the labourer in the town as well as in the country. The chief causes of this difference are, first, the violent conversion of the bulk of the English population into mere labourers long ago; and, secondly, the existence of great cities and various non-agricultural employments, created by mineral wealth and a superior commercial situation, but confined to particular spots by the accumulation of land in unproductive hands, by the uncertainty of the law and of titles, and by the scantness and poverty of the rural population on which country towns depend for a market. An immense immigration into a few great cities has accordingly been the movement in England, corresponding to emigration from Ireland; and no less than 5,133,157 persons, by official estimate, will, in the middle of the present year (1870), be gathered into seven large towns—London, Liverpool, Manchester, Birmingham, Leeds, Sheffield, and Bristol—3,214,707, or one-sixth of the total population, being concentrated in London alone. A two-fold mischief has thus been produced by the English land system, in the wretched and hopeless condition of the agricultural labourer on the one hand, and the precarious employment and crowded dwellings of the working classes in large towns on the other.

(b). This state of things engages the profound attention of economists on the Continent, struck by the contrast which the distribution of both land and population in England presents to what is found in every other part of the civilised world. "England," says a distinguished Englishman on the Continent, referring particularly to the researches of a German economist, "is the only Teutonic community, we believe we might say the only civilised community, in which the bulk of the land under cultivation is not in the hands of small proprietors; clearly, therefore, England represents the exception, and not the rule."—(*Professor T. B. Cliffe Leslie, 1870.*)

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IRISH AND
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II.—IRISH AND CONTINENTAL SYSTEMS.

(a). Let Ireland on the one hand and Belgium (or Prussia, since the introduction of Stein's system) on the other be taken as illustrations. In the former were to be seen immense estates held and let at second-hand by "middlemen," and let and sublet again, like a sporadic growth generating its kind, till it reached, if it *did* reach, its unit in the potatoepatch. In the latter, the law which facilitates and cheapens purchase, to the small equally with the large buyer, beginning at the *small end*, so to speak, sets at work the self-interest and care, and precedence of every individual who can buy, no matter what the quantity. The result shows itself in the conduct and character of a whole people. In each case, the land reflects like a mirror the motives set to work upon it. Take away the individual sense of property, and the opposite result is seen. Arthur Young's often-quoted words underlie the whole question. Those who attribute the results experienced in Ireland to national character, find in Ireland examples which contradict the judgment, even were it not nullified by the impossibility of distinguishing between cause and effect. In his speech on the second reading of the Irish Church Bill, the Bishop of Lichfield (late Bishop of New Zealand) said—

"In New Zealand, Englishmen, Scotchmen, and Irishmen, live together upon the best terms. The qualities of each particular class become blended with each other to the improvement of all. No dissension as to tenant-right can arise, *because every tenant has the right of purchasing the land he holds at a fixed price.* Under these circumstances, the tenants, instead of being lazy and drunken, strain every nerve in order to save the money which will enable them to become proprietors of the land they occupy. In this way it happens that the most irregular people of the Irish race become steady and industrious, acquiring property, and losing all their wandering habits, until it becomes almost impossible to distinguish between the comparative value of the character of Irish and Scotch elements.

"Of their loyalty to the Crown I can speak from my own observation, for the only regiment that is employed in keeping order in New Zealand is *Her Majesty's Royal Irish.*"

(b). But if this be true in New Zealand, it is not less exemplified at Home, where the impartial pen of the *Times'* correspondent in Ireland has exhibited instances of estates as well managed by *resident proprietors*, and in some cases by intelligent agents, and a tenantry as satisfied, prosperous, and attached, as in any part of England.—(*Mr. W. C. Hoskyns, Cobden Club Series.*)

III.—IRELAND AND FLANDERS.

(a). In England a contrast is often drawn between Flanders and Ireland, and the former is said to enjoy agricultural advantages not possessed by Ireland, such as great markets, a better climate, abundance of manure, more manufactures. This is a point on which some light should be thrown. Flanders does enjoy certain advantages, but they are equally accessible to the Irish, derived as they are from human industry ;

whereas the advantages possessed by Ireland, coming as they do from nature, are not within the reach of the Flemish.

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(b). Let us look first at climate and soil. The climate of Ireland is damper and less warm in summer, but less cold in winter. In Flanders it rains 175 days in a year; in Ireland, 220 days. On this account the Irish climate is more favourable to the growth of grass, forage, and roots, but less so to the ripening of cereals; yet the Fleming would be but too happy had he such a climate—cereals being but of secondary importance with him and often used as food for his cattle. He seeks only abundance of food for his cows, knowing that the value of live-stock goes on increasing, while that of cereals remains stationary. Butter, flax, colza, and chicory, are the staple articles of his wealth, and the climate of Ireland is at least as well suited to the production of these as that of Flanders.

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(c). As for the soil of Ireland, it produces excellent pasture *spontaneously*; whilst that of Flanders hardly permits of the natural growth of heather and furze. It is the worst soil in all Europe—sterile sand, like that of La Campine and of Brandenburg. A few miles from Antwerp, land sells for 20 francs (16s.) an acre, and those who buy it for the purpose of cultivation get ruined. Having been fertilised by ten centuries of laborious husbandry, the soil of Flanders does not yield a single crop without being manured—a fact unique in Europe. * * Not a blade of grass grows in Flanders without manures. The ideal, the dream of the Flemish farmer, is a few acres of good grass. In Ireland nature supplies grass in abundance.

(d). But it may be said that Flanders is well supplied with manure. Doubtless it is; but it is got only by returning to the earth all that has been taken from it. The Flemish farmer scrupulously collects every atom of sewage from the towns; he guards his manure like a treasure, putting a roof over it to prevent the rain and sunshine from spoiling it. He gathers mud from rivers and canals, the excretions of animals along the high roads, and their bones for conversion into phosphate. With cows' urine, gathered in tanks, he waters turnips, which would not come up without it, and he spends incredible sums in the purchase of guano and artificial manures.

(e). True, it may be said, he must have money for that, and the Irishman has none. But where does the Fleming's money come from? From his flax, colza, hops, and chicory—crops which he sells at the rate of from 600 to 1,500 francs (£24 to £60) per hectare. And why cannot the Irishman go and do likewise? The Irishman, it may be answered, must grow food for himself. But so does the Fleming; for, in fact, apart from the special crops referred to, he grows enough to support a population relatively twice as large as that of Ireland. The special crops for which Flanders is famous are shipped to England, and the English markets are not farther from Ireland than from Flanders.

(f). But there are manufactures in Flanders, it is said, and none in Ireland, or only Ulster. Now, on this point it is important to draw a distinction. Flanders possesses undoubtedly a number of small local industries, but they are the consequences, not the cause, of its good husbandry, and any country possessing the latter would be in possession

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of the former. The great industries of Belgium are situated in the Walloon country, not in Flanders.

(g). On the whole, for carrying farming to a high pitch of perfection, Ireland enjoys far greater advantages than Flanders, the land being much superior, the climate equally favourable to the growth of valuable crops, and the same markets being at hand.—(*M. Emile de Lavelaye, Cobden Club Essays.*)

IV.—IRELAND AND BENGAL.

These considerations would justify the interference of the State to afford agricultural tenants in England greater security than they at present enjoy. But the claim of the tenant in Ireland on the protection of the State is infinitely stronger. The landholders of Ireland are not only, in the same sense as those of England, the creatures, the tenants of the State, but they are the creatures of a violent interference with pre-existing rights of property. Moreover, by further violent interference in the shape of penal laws, directed expressly against industry and accumulation on the part of the bulk of the people, and precluding the acquisition of property and capital and the rise of other industries, the State forced the great mass of the population to become competitors for the occupation of land as a means of subsistence. They were thus placed even more at the mercy of the landlord than the Egyptians were at the mercy of Pharaoh in the famine, for their land as well as their cattle and money were gone, and nothing remained to exchange for bread but their bodies and their labour. Rent under these circumstances became, not what political economists define it, the surplus above average wages and profit, but the surplus above minimum wages without any profit at all.—(*Professor T. E. Cliffe Leslie, 1866.*)

2. EMIGRATION AND THE COLONIES—(*Mr. J. A. Froude, January 1870.*)

I. (a). Emigration remains the only practical remedy for the evils of Ireland, England, and Scotland, which contain as many people as in the present condition of industry they can hold. The annual increase of the population has to be drafted off and disposed of elsewhere; and while the vast proportion of it continues to be directed on the shores of the American Republic, those who leave us, leave us for the most part resenting the indifference with which their loss is regarded. They part from us as from a hard step-mother. They are exiles from a country which was the home of their birth, which they had no desire to leave, but which drives them from her at the alternative of starvation.

(b). England at the same time possesses dependencies of her own, not less extensive than the United States, not less rich in natural resources, not less able to provide for these expatriated swarms, where they would remain attached to her Crown, where their well-being would be our well-being, their brains and arms our brains and arms, every acre which they could reclaim from the wilderness so much added to English soil, and themselves and their families fresh additions to our national stability. * * *

(c). And yet it is even argued that our colonies are a burden to us, and that the sooner they are cut adrift from us the better. They are, or have been, demonstratively loyal. They are proud of their origin, conscious of the value to themselves of being part of a great empire, and willing and eager to find a home for every industrious family that we can spare. We answer impatiently that they are welcome to our people, if our people choose to go to them; but whether they go to them or to America, whether the colonies themselves remain under our flag, or proclaim their independence, or attach themselves to some other power, is a matter which concerns themselves entirely, and is to us of profound indifference. * * *

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(d). It used to be considered that the first of all duties in an English citizen was his duty to his country. His country in return was bound to preserve and care for him. What change has passed over us, that allegiance can now be shifted at pleasure like a suit of clothes? Is it from some proud consciousness of superabundant strength? Are our arms so irresistible that we have no longer an enemy to fear? Is our prosperity so overflowing and the continuance of it so certain that we can now let it flow from us elsewhere because we can contain no more? Our national arrogance will scarcely presume so far. Is it that the great powers of the world have furled their battle flags? Is the parliament of man on the way to be constituted, and is the rivalry of empires to be confined for the future to competition in the arts of peace? Never at any period in the world's history was so large a share of the profits of industry expended upon armies and arms. * *

II. When we consider the increasing populousness of other nations, their imperial energy, and their vast political development; when we contrast the enormous area of territory which belongs to Russia, to the United States, or to Germany, with the puny dimensions of our own island home, prejudice itself cannot hide from us that our place as a first-rate power is gone among such rivals, unless we can identify the colonies with ourselves, and multiply the English soil by spreading the English race over them. Our fathers, looking down into coming times, proud of their country and jealous for its greatness, secured at the cannon's mouth the fairest portions of the earth's surface to the English flag. They bequeathed to us an inheritance so magnificent, that imagination itself cannot measure the vastness of its capabilities. Let the Canadian Dominion, let Australia, the Cape, and New Zealand, be occupied by subjects of the British Crown, be consolidated by a common cord of patriotism—equal members, all of them, of a splendid empire, and alike interested in its grandeur—and the fortunes of England may still be in their infancy, and a second era of glory and power be dawning upon us, to which our past history may be but the faint and insignificant prelude. The yet unexhausted vigour of our people, with boundless room in which to expand, will reproduce the old English character and the old English strength over an area of a hundred Britains. The United States of America themselves do not possess a more brilliant prospect.

It is no less certain that if we cannot rise to the height of the occasion, the days of our greatness are numbered.

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3. POSSESSION OF LAND STIMULATES PATRIOTISM.

I. The attachment of a people to their country depends upon the sense in which it is really and truly their home. Men will fight for their homes, because without a home they and their families are turned shelterless adrift; and as the world has been hitherto constituted, they have had no means of finding a new home for themselves elsewhere. And the idea of home is inseparably connected with the possession or permanent occupation of land. Where a man's property is in money, a slip of paper will now transfer it to any part of the world to which he pleases to send it. Where it is in the skill of his hands, there is another hemisphere now open to him, where employers speaking his own language are eager to secure his services. Land alone he cannot take with him. The fortunes of the possessors of the soil of any country are bound up in the fortunes of the country to which they belong, and thus those nations have always been the most stable in which the land is most widely divided, or where the largest number of people have a personal concern in it. Interest and natural feeling coincide to produce the same result. Ridicule as we please what is now looked upon as sentimentalism, we cannot escape from our nature. Attachment to locality is part of the human constitution. Those who have been brought up in particular places have a feeling for them which they cannot transfer. A family which has occupied a farm for one or two years will leave it without difficulty. In one or two generations the wrench becomes severely painful. To remove tenants after half a dozen generations is like tearing up a grown tree by the roots. The world is not outgrowing associations of this kind. It never can or will outgrow them. The *aræ et foci*, the sense of home and the sacred associations which grow up along with it, are as warm in the New Continent as in the Old. It is not that every member of a family must remain on the same spot. The professions and the trades necessarily absorb a large proportion of the children as they grow to manhood; but it is the pride of the New Englander to point to his namesake and kinsman now occupying the farm which was cleared by his Puritan ancestors. The home of the elder branch is still the home of the family, and the links of association, and all the passions which are born of it, hold together and bind in one the scattered kindred.

II. England was once the peculiar nursery of this kind of sentiment, and thus it was that an Englishman's patriotism was so peculiarly powerful. It has seemed of late as if all other countries understood it better than we. In France, in Germany, in Prussia, even in Spain and Italy, either revolution or the wisdom of Government has divided the land. The great proprietors have been persuaded or induced to sell; when persuasion has failed, they have been compelled. The laws of inheritance are so adjusted as to make accumulation of estates impossible. Two-thirds, or at least half, the population of those countries have their lives and fortunes interlinked inseparably with the soil; and their fidelity in time of trial is at once rewarded and guaranteed by the possession of it. England is alone an exception. When serfdom was extinguished in Prussia, each serf had a share in his late owner's land assigned to him as his own. The English villein was released from his bondage with no further compensation, and is now the agricultural

labourer—the least cared for specimen of humanity in any civilised country. In France there are five million landed proprietors. In England the exact numbers are unknown, but it is notorious that during the last century the small agricultural freeholds have been generally devoured by the large. In the neighbourhood of the great towns, estates have been broken up and sold in small portions for the villas of merchants and manufacturers; but the possibility of ownership recedes daily further from the reach of any but the favourites of fortune. The wealthy alone possess that original hold on English soil which entitles England in return to depend upon them on the day of trial; and thus it is that, to persons who think seriously, there appears something precarious in England's greatness, as if with all her wealth and all her power a single disaster might end it. No nation ever suffered a more tremendous humiliation than France in the second occupation of Paris; a third time she has seen her capital occupied, and her entire social system crumbled into anarchy. But she rallied before, and she will unquestionably rally once more. Her population remain rooted in the soil to which they are passionately attached, and their permanent depression is impossible. Forty millions of people can neither be destroyed nor removed; and where the people are, and where the land is their own, their recovery is a matter of but a few years at most. They may lose men and money and an outlying province, but that is all the injury which an external power can inflict on them. With England it is difficult to feel the same confidence. If the spell of our insular security be once broken, if it be once proved that the Channel is no longer an impossible barrier, and that we are now on a level with the Continent, the circumstances would be altered which have given us hitherto our exceptional advantages; and those of us who can choose a home elsewhere, who have been deprived of everything which should specially attach us to English soil,—that is to say, ninety-nine families out of every hundred,—will have lost all inducement to remain in so unprofitable a neighbourhood.—(*Mr. Erskine, 1870.*)

4. ON NATIONAL PROPERTY—(*Professor Nassau Senior.*)

I. The great object and the great difficulty in government is the preservation of individual property. All the fraud and almost all the violence, which it is the business of Government to prevent and repress, arise from the attempts of mankind to deprive one another of the fruits of their respective industry and frugality. * * *

II. (a). But the most revolting, and perhaps the most mischievous, form of robbery is that in which the Government itself becomes an accomplice,—when the property of whole classes of individuals is swept away by legislative enactments, and men owe their ruin to that very institution which was created to ensure their safety.

(b). It is highly honourable to the honesty and sagacity of the people of England that they have guarded against this evil with almost superstitious care, and have allowed every individual to oppose his own interests to those of the public to the utmost extent to which, with any resemblance to decency, they can be urged. It may be a question, indeed, whether they have not often gone beyond this point, and allowed pleas of well-founded expectations, or (as they are usually termed) vested interests,

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to impede the general good to an unnecessary, and, therefore, a mischievous degree.

III. (a). But with all our anxiety—and it is a very proper anxiety—to hold the balance even between individuals and the public, or to lean rather towards the weaker party, there are two landmarks which we have never transgressed; the individual interests, which, whether in possession or in expectation, we have considered as property, even when inconsistent with the public welfare, and either left untouched or bought up at an ample price, have been, in the first place, lawful, and, secondly, capable of valuation.

(b). No interest, however definite and vested, can be respected if it be unlawful. No voice has ever been lifted up in defence of the vested interests of paupers in poor-law abuses, or of vestrymen and overseers in parochial jobbing. So far, indeed, has this been carried, that a profit based on an illegal act is not held entitled to mere ordinary protection against an equally unlawful aggression. The printer who pirated Lord Byron's "Cain" was allowed to plead his own wrong in his own defence; to maintain, and to maintain successfully, that "Cain" being an unlawful publication was not property, and therefore could not be the subject of plunder.

(c). Nor can any interest, however lawful, be considered property as against the public, unless it be capable of valuation. And for this reason, if incapable of valuation, it must be incapable of compensation, and therefore, if inviolable, would be an unsurmountable barrier to any improvement inconsistent with its existence.

(d). If a house is to be pulled down, and its site employed for public purposes, the owner receives a full compensation for every advantage connected with it which can be estimated. But he obtains no *pretium affectionis*. He is not paid a larger indemnity because it was the seat of his ancestors, or endeared to him by any peculiar associations. His claim on any such grounds for compensation is rejected, because as the subject-matter is incapable of valuation, to allow it would open a door to an indefinite amount of fraud and extortion; nor is he allowed to refuse the bargain offered to him by the public, because such a refusal would be inconsistent with the general interest of the community. * *

(e). Of course we do not mean to affirm that every lawful interest which is susceptible of valuation is property, and therefore entitled to be either compensated or left undisturbed. In legislation we are constantly forced to choose between motives acting in opposite directions, and to purchase general advantage at the expense of particular inconvenience. It is an evil that any fair expectation should be disappointed. But there are cases in which the public welfare requires this evil to be submitted to. * * The hope of eventually succeeding to an estate the present possessor of which is seized in fee, or, in other words, has the absolute property, is an instance of a lawful interest capable of estimation and even of alienation, but utterly unprotected. It is left exposed to the extravagance or caprice of the tenant in fee-simple. It has recently, and in many thousand instances, been taken away by the legislature, and without compensation. Until January 1, 1834, no person could inherit the freehold property of his lineal descendants. On the death of a person possessed of such property, intestate and without issue, leav-

ing a father or mother, or more remote lineal ancestor, it went over to his collateral relatives. In 1833 this law was wholly altered. In such cases the property now goes to the father or mother, or remote lineal ancestor, in preference to the collaterals. In many instances this must defeat expectations not merely well founded, but approaching to certainties. The brothers, uncles, nephews, and cousins of lunatics, or of minors in such a state of health as to be very unlikely to reach the age at which they could be capable of making a will, had, until the 3rd and 4th Will. IV, cap. 106, was passed, prospects of succession so definite, that in many cases they would have sold for considerable prices. All these interests, though lawful and capable of valuation, have been swept away without compensation. And it was necessary that this should be done; the old law was obviously inconvenient, and to have attempted to compensate all those who, if the principle of compensation had been admitted, must have been held entitled to it, would have involved such an expense as to have rendered the alteration of the law impracticable. We affirm, not that every lawful interest which is capable of valuation is inviolable, but that no interest can be held inviolable as against the public unless it be capable of valuation. * *

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IV. (a). The estates of Bishops and chapters, of the universities and their colleges and halls, and, generally speaking, of all corporations, have no owners beyond the life-interests of the existing Bishops and members of chapters and corporations. Those life-interests the State is bound to protect; to affect them without the consent of their owners would be, as we have already stated, spoliation in one of its most odious forms. But, subject to those life-interests, the State is not only justified, but absolutely bound, to employ the property in the way most conducive to the public interest. In many, indeed in the vast majority of cases, the existing application, or at least an application of the same kind, is on the whole the best that can be adopted. * * But while, on the one hand, we deny the expediency of diverting the estates of the universities from educational, and those of the sees and chapters and benefices in question from ecclesiastical purposes; while we affirm that such a diversion would be short-sighted and barbarous folly; on the other hand, we equally deny that, supposing the existing life-interests to be untouched, and that the diversion could be proved to be expedient, it would be an *injustice*. In other words, if the expediency can be proved, we affirm the right.

(b). And not only must the expediency, on which alone the right is founded, be clearly proved, but it must be an expediency with reference to the nation as a permanent body. A violation of this last rule appears to be the only mode in which a nation can commit an injustice, although no assignable individual has a right to consider himself as unjustly treated.

5. MR. J. HECTOR (*Railways and Land*).

I. But the remedy. Had we to settle accounts with the zemindars of 1793, the matter would be plain enough. Unfortunately it is not with them that we have to deal; much of the land, perhaps most of it, has changed hands over and over again since they possessed it, and as sub-

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Para. 5, contd.

sequent holders came into possession, Government made no sign. Many of the present holders, the majority of them it is very probable, have obtained their land by purchase, and their rights must not be violated. It is clear they must receive compensation before Government can acquire an increased share in the rent of the land. A scheme of compensation does not imply the dispossession of the zemindars. It would be next to an impossibility, from a financial point of view, to buy them out wholly; and however much we may regret the abandonment of the village system of collecting the land rent in Bengal,—and the abandonment is to be regretted for more reasons than one,—we doubt whether it would be a politic step to displace the zemindar, even were such a step practicable. To bring up the Government share of the rent of Bengal to a level with the proportion paid by the other provinces, is a much less difficult measure, and would occasion little disturbance of the existing order of things. In the North-Western Provinces the Government share of the rent is about 50 per cent., or one-half. In Bengal, the Government share is only about one-fourth. The whole rent in Bengal is estimated at £14,000,000 to £17,000,000, of which Government receives less than four millions. Let us suppose Government should determine to bring up the contribution to one-half of the whole, say to eight millions, and to acquire a proportionate share in all future increase. The compensation money would be fixed accordingly; and there need be no breach of faith, even in the case of holders by purchase. There would certainly be a certain degree of compulsion; but the right of Government to acquire land is already recognised in the Land Acquisition Act, and if the exercise of this right is defensible in small things, it is still more justifiable in a matter which concerns the well-being of the whole country. It is not improbable, however, that a compromise on this basis would be readily acquiesced in by the zemindars. The payment of compensation money would be welcome to many of them. * *

II. The whole value of the zemindars' interest in the land in Bengal, taking it at 20 years' purchase, may be about 200 to 260 millions; but 20 years' purchase is, we believe, more than on the average the land is worth. For our present purpose it will be sufficient if we adopt this estimate: On the same basis, the Government interest is worth about 72 millions. The whole value of the land may thus be set down as 272 to 332 millions. To find a sum of 200 or 260 millions to buy out the zemindars would indeed be a difficult task, did no objection exist on other grounds to the absolute and complete redemption of the land. It is not, however, necessary to find all this money. By appraising the land we arrive at its value, and thence at the value of a share or portion of it. The Government share is, we have seen, only about one-fourth instead of one-half as it is now in the North-Western Provinces, and instead of ten-elevenths as it was in Bengal when the permanent settlement was executed, for it is, besides, debarred from all participation in the increase of the rent—an increase which chiefly occurs through the expenditure of Government money on public works and otherwise. Now, if we wish to bring up the Government interest to one-half, which is about the Government proportion of the rent in other provinces, the compensation to be paid to the zemindars might

be rated in that proportion. * * We do not propose, be it understood, to lay down one-half as an arbitrary limit to which the Government share of the rental should be raised. We must, in familiar language, "cut our coat according to our cloth"; and if we cannot have one-half, why we must be satisfied with less. The share we obtain will depend on the price we pay; but the latter must in turn depend on what we can afford.

APP.
XXXI.

Value of
annuity.
Para. 2.

6. The law not only enables an owner of land in fee-simple to leave the land to whom he will, but it gives him power, by deed or will, to limit the land to any number of persons after him for life, and to the unborn son of the last survivor, so that such unborn son will become the first person who shall have full power over the land after the death of the maker of the deed or will. Allowing for the minority of the son of the last survivor, the law in fact permits a man to tie up the land for a life or lives in being, and for twenty-one years after the death of the last life, being an average of rather less than seventy years.

7. MR. J. MACDONELL (*On the Land Question*).

A perpetual annuity of £56,540,000, or the annual value of land in the United Kingdom, is equal to a terminable annuity varying in amount with its duration. I apprehend that thinkers such as Mr. Mill would argue that the latter would be a full equivalent of all the land-owners' just claims. If he and those of his way of thinking are right, then all which it would be essential to raise would be the difference between the perpetual and the terminable annuity for a certain number of years.

If, then, all proprietors receive at the present time the value of the reversions of their land, and if they were allowed to enjoy their estates for the period of their lives, they would be compensated.

Ample justice would be done by the present payment of a sum which would one hundred and fifty years hence yield a perpetual annuity equal to or slightly in excess of the present annual value of the soil.

8. 1. Present value of a perpetual annuity of £1 to be entered upon—

	5 per cent.	6 per cent.	8 per cent.
70 years hence ...	·657323	·282122	·057180
100 " " ...	·152690	·049120	·005682

2. Present value of an annuity of £1 per annum for—

40 years ...	17·159086	15·046207	11·924613
70 " ...	19·342677	16·384544	12·442820
100 " ...	19·847910	16·617546	12·494318

3. Present value of a life annuity (age 21) beginning (Carlisle)—

70 years hence ...	·51685345	·23307294	·05008185
100 " " ...	·11958824	·04058137	·004976852

4. Value of perpetual annuity—

20

16·6

12·5

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